Legitimacy is in the eye of the beholder: Why Do We See More Unilateral Sanctions Being Imposed Lately?

Ilef Mehrzi

制裁措置の正当性の主観性―なぜ単独制裁が増加しているか？

イレフ・メフルズィ

要　旨

国連安全保障理事会にとって、制裁（武力の行使を伴わない措置）は冷戦後の選択肢の一つとなった。実際、二極化が終わり、安全保障理事会は行動の範囲を拡大し、そのツールキットで利用可能な多様な手段を模索するようになった。当然、この展開には新たな課題が伴い、安全保障理事会の制裁の正当性がその一つである。この論文では、正当性を、国際的な規範と標準への適合を部分的に伴う根本的な主観的信念であると定義する。国連制裁の正当性は、当事者や政治的立場によって見方が異なり、また、当事者がいかに国連の正当性を理解するかは、一方的な制裁の急増現象と密接に関連していると論じる。一方、地域機構は、安全保障理事会の正当性を利用して、国際関係における一方的な制裁を正当化または非合法化する。また、EU やその政治および司法機関などは、国連制裁が実施される前にその正当性を精査するなど重要な役割を果たした。一方、個々の国は、国連の制裁の正当性を異なる方法で理解する。たとえば、米国など影響力のある大国の場合、重要なのは有効性だ。国連の制裁は、自国の目標を達成し、一方的主義よりも優れた見返りを提供する場合にのみ正当と見なします。言い換えると、国家と国際機関は、国連の制裁の正当性をさまざまな方法で理解し、それらに応じて自らの利益を追求している（正確には、一方的な制裁に頼る）状況は、この理解がマクロレベル（すなわち、国際秩序）に大きな影響を与える可能性があることを暗示している。

キーワード：国連の制裁措置、単独制裁措置、正当性、有効性、合法性、地域機構、州、国際秩序

Table of contents

1. Introduction

The recent proliferation of unilateral sanctions (i.e. sanctions imposed outside the multilateral framework of the United Nations), constitutes one of the most notable developments in the practice of sanctions over the last few decades[1]. According to the Targeted Sanctions Consortium database (TSC), in 2013 almost ninety percent of UN sanctions episodes were accompanied by unilateral sanctions, also, more than two third of UN sanctions were simultaneously applied with sanctions imposed by regional organizations such as the European Union (EU) and the African Union (AU). Interestingly, sanctions imposed by the EU represented more than half of all sanctions imposed by regional bodies. On the other side, more than sixty percent of all unilateral sanctions applied by individual states were uniquely imposed by the USA[2]. One possible explanation of this phenomenon may relate to the question of legitimacy. This paper underlines the legitimacy of sanctions imposed by the Security Council (UNSC) under Chapter VII of the UN Charter as it is perceived by regional organizations and individual states. It examines the way regional organizations understand legitimacy and how such understanding affects their actions. It also underlines the impact of concerns about legitimacy of multilateral sanctions on their effectiveness and on the behavior of individual states. Before proceeding, it is necessary to note that the nexus between legitimacy and

effectiveness of sanctions is systematically invoked by both academics and practitioners. *Inter Alia*, a recent study conducted by the UN University (Cockayne, Brubaker and Jayakody 2018) stressed the relationship between the ongoing wave of judicial processes against UN sanctions and the legitimacy and effectiveness of such sanctions. It argued that the ongoing wave of challenging the legitimacy of UN sanctions in domestic and regional courts for respect of *due process requirements* is not only a question of legitimacy but also of effectiveness[3]. Similarly, in a letter addressed to the Council, the UN Ombudsperson to the ISIL and Al-Qaida Sanctions Committee asserted that the effectiveness of UN sanctions is contingent upon the availability of requirements related to *due process* standards (particularly, impartiality and independence), that such requirements are necessary to secure the cooperation of member states precisely because they '*strengthen the effectiveness"* and it provides a "guarantee" to the states who care about upholding the rule of law, that those measures are both necessary and fair"[4]. Equally, Daugirdas suggests that legitimacy and effectiveness are tightly linked and that the very existence of international organizations (IOs) may be threatened if their legitimacy, and thus effectiveness, are hampered: "*[l] egitimacy and effectiveness of IOs are tightly linked because IOs depend on voluntary state cooperation and state financial support to carry out their decisions and operations. Unless they are perceived as legitimate, IOs will have a difficult time securing either one. IOs that are less effective because they are perceived to be illegitimate will be less useful to their member states and may even risk being shut down"*[5] (Daugirdas 2014, 1007).

At this level, it is important to define the relevant concepts used in this paper, including the distinction between unilateral and multilateral sanctions and the concept of legitimacy, as well as the different historical phases during which the legitimacy of UN sanctions was under scrutiny.

1.1 The dichotomy multilateral-unilateral sanctions

In legal theory sanctions are defined as a *"reaction to illegality"*, i.e. a reaction to a violation of an established legal obligation (Tzanakopoulos 2015, 147). This definition is applicable in both the national and international legal order. The Austrian legal and political philosopher Hans Kelsen wrote: "*the consequence that attaches by law to wrongful conduct—and conversely, wrongful conduct is the legal condition for the imposition of a sanction".* Similarly, the Report of the International Law Commission (ILC) on the Work of its Fifty-Third Session (2001) refers to sanctions as a "*reaction to illegality"* that may be *unilateral (decentralized) or collective (centralized)*[6]. Indeed, unlike national law, international law provides a further distinction between two types of sanctions: unilateral and multilateral sanctions. On the one hand, this distinction has a *normative* rather than a *descriptive* foundation. According to Orakhelashvili, the determination of what is unilateral and what is multilateral is provided by the legal system and does not depend on the characteristics of sanctions (e.g. the scope or the number of actors involved in the decision-making process). This is, for instance, the case of sanctions imposed by the European Union defined as unilateral measures regardless of the fact that they are taken collectively (Orakhelashvili 2015, 4)[7]. On the other hand, they have different legal foundations. As for multilateral sanctions, Carisch et al. asserted that the UN Charter endowed the UNSC with the exclusive legal authority to use "globally binding sanctions" in order to maintain and restore international peace and security. They define multilateral sanctions as "*coercive policies"* deployed by the UN in order to "*reinforce internationally accepted norms of peace and security, usually enshrined in international law"*[8]. While for unilateral sanctions, Article 48 of the ILC Articles on The Responsibility of States

for Internationally Wrongful Acts (2001) is considered to be their legal foundation (Carisch et al. 2017)[9]. Pellet (2015) identified four criteria to distinguish unilateral sanctions from potentially similar measures. Firstly, they are "*lawful coercive reaction*s" taken as a response to an "*internationally wrongful act"*. Secondly, they may only be triggered as a reaction to a "*grave violation"* of peremptory norms of international law (*jus cogens*). Thirdly, they are distinguished from classical countermeasures (a.k.a. *reprisals*), in that they are not a reaction to "*a previous breach in the interest of particular State*s". Fourthly and finally, the sender state or organization do not need to be harmed by this violation, because it acts in the name of and for the interest of the international community as a whole[10].

1.2 Conceptual intractability of legitimacy

P. Jan Klabbers once wrote: *'[i]t has long been recognized by international lawyers of a more or less critical bent that one of the ways international law can be considered useful (...) is that it provides a vocabulary for discussing things. Rules on use of force and self-defense may not solve conflicts, but provide a language (and often enough the most relevant language) for discussing the use of force. Rules on international trade may not solve trade conflicts, but help provide the relevant actors with a language in which to discuss whether tuna caught by means of driftnet fishing should be banned from markets or not'*[11]. In the same way, for many scholars legitimacy is regarded as an intractable and problematic concept, yet warts and all, it does provide a basis for understanding things and explaining various social and political phenomena both at the national and international level. To discern the concept of legitimacy we need to distinguish/ decouple it from concepts that may generate confusion in the mind of the reader.

Firstly, we need to distinguish legitimacy from legality and clarify the link between the two concepts. Legal scholar Kristina Daugirdas differentiated between "*sociological legitimacy"* and legality. Sociological legitimacy refers to the "*perception"* that the IO is legitimate, while legality refers to the perception that the IO is acting in compliance with its international obligations[12]. Put differently, it is possible to separate legitimacy and legality. This was for example the case of NATO's military operation in Kosovo (1999) which was explicitly qualified by the Independent International Commission on Kosovo as an "*illegal but legitimate* act*"*[13]. Nevertheless, that was the only case in recent history where the legitimacy of an act made by an international organization was admitted though its legality was precluded. That's why many scholars, especially neoliberal institutionalists such as Grant and Keohane (2005) and Buchanan and Keohane (2006) admit that legitimacy and legality are often coupled in the sense that IO's legitimacy "*depends in part"* on its legality (Daugirdas 2014, 1007)[14]. In a similar fashion, international lawyers admit that legality and legitimacy *"do not always coincid*e", and that distinction between the two concepts lies within the sense that the subject may give to legitimacy[15]. Pellet argued that the relation between legitimacy and legality is reciprocal and goes in both ways[16]. On the one hand, rules of law will only appear, and be seen, as lawful when they are legitimate. On the other hand, legality is part of the legitimization process, that is, behaviors which are in conformity with legal rules are seen as legitimate, while those which are unlawful will appear to be illegitimate. So generally talking, the legality of a given behavior guarantees its acceptance as legitimate in most of the cases (Pellet 2008, 729). To recapitulate, legitimacy and justice are two different things that may exist separately, yet they have areas of intersection. In fact, while legitimacy is a *subjective belief*[17], such belief is partly contingent upon the conformity of that rule or institution with the agreed-upon standards and laws[18].

Secondly, legitimacy needs to be separated from fairness, justice and morality. Unlike Franck (1993)[19], Pellet argued that fairness and legitimacy are connected because fairness of the procedure or its outcomes may be part of the legitimacy of any given rule and action, but both concepts must be treated as two different concepts (Pellet 2008)[20]. Similarly, many scholars agree that the concept of legitimacy shall be differentiated from that of justice. For instance, Buchanan and Keohane argue that such confusion between the two concepts in the international area may lead to undermining what they called "*the valuable social function of legitimacy assessments"*[21]. They suggest two reasons to support their argument: on the one hand, the absence of a consensus on what could be considered as a *just standard* conditioning the acquisition of legitimacy. On the other hand, even if it is possible to maintain a consensus on what justice requires, the consequences of not meeting such standard would be "*self-defeating from the stand-point of justice itself"* because such consequences would undermine the effectiveness of international institutions, while adversely, justice shall not be maintained without effectiveness (Buchanan and Keohane 2009, 412)[22]. Finally, it is necessary to separate legitimacy from *morality*. In one sense, morality is used as a "*counterpart to justice"*. In a different context, it refers to the "*conformity to certain people's habits"* (i.e. to what they consider as a *common sense*). In this latter sense, morality has a merely "*descriptive"* function, and moral issues *"may be simply those issues that have been publicized and many people have developed some sensitivities towards them but may not have anything to do with the sense/criterion of justice"*[23]. In brief, this study maintains the argument of P. Hurd who argued that the debate over the legitimacy of the decisions and acts made by the SC says nothing about their justness (Hurd 2008, 113)[24].

1.3. Proposed definition of legitimacy

The legitimacy of an international organization is a subject-oriented phenomenon and not an objective criterion. It refers to the "belief that a rule or an institution deserves the actor's deference and ought to be respected". This belief is partly dependent on the conformity with established norms and with the agreed-upon standards of international law. Also, legitimacy is a continuous phenomenon that is crystallized through a continuous processes of legitimation and delegitimation. Finally, the distinction between input legitimacy (i.e. the content of the norm and the procedure of elaboration), and output legitimacy (i.e. the effectiveness of the norm in attending its stated goal), may be useful in capturing the way actors question the legitimacy of acts and decisions made by the UN.

Firstly, Hurd conceptualized legitimacy as "*a subjective belief that an institution or a rule ought to be respected and deserves the actors' deference*". Hurd's conceptualization has traces in the work of Jürgen Habermas, precisely in chapter five of his book *Communication and the Evolution of Society* where he unfolded *Legitimation Problems that are faced by modern states*[25]. It has also traces in the definition provided by American sociologist Mark Suchman according to which legitimacy is a "*generalized perception of or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions*" (Hurd 2008, 25)[26]. In this sense, *generalized* refers to the idea that legitimacy is an "*umbrella evaluation\"* that is resilient to certain acts and occurrences, and that also depends on a given historical process. It reflects the perception/assumption that the audience has vis-à-vis the institution or the rule. So, while legitimacy is *"possessed objectively",* it is *"created subjectively"*. Finally, legitimacy is a socially constructed phenomenon, because it depends on collective audience but remains independent from individual

observers[27]. Hence, *subjectivity is an* important aspect that is central to the understanding of legitimacy. Hurd, accentuated the idea that legitimacy is a "*necessarily subjective"*[28] and could by no means be an objective concept, otherwise it would be void of meaning, analytically irrelevant and even confusing[29]. So, for the purpose of this paper, the emphasis on the "*subjective character of legitimacy"* is vital, and that means that no distinction is made between saying that a rule or an institution is "*legitimate",* and saying that such rule or institution is *considered to be legitimate* (Weber 1978). Also, unlike psychologists such as Richard Sennett (1980) who distinguished between the "*psychological process"* (i.e. the perception that an organization is legitimate), and the "*authoritarian process"* (i.e. the internal feeling of being compelled to obey), in political science, both processes are generally understood as being the same thing[30]. Practically talking, if a state or a regional organization thinks that the UN is legitimate, it means that they believe that UN rules and institutions ought to be obeyed and that they are supposed to fashion their acts in accordance with the constraints of such rules or institutions. Yet, subjectivity means also that legitimacy is conceived differently depending on the actors involved, and on the political setting. Also, strategies and processes of legitimation will differ depending on the change in the issues at stake, interests and the types of political power involved (Hurd 2008, 33-34)[31].

Secondly, the conformity to international law is one fundamental aspect of legitimacy. In the case of UN sanctions, saying that legitimacy is a subjective belief does not preclude the idea that such belief is partly contingent upon the compliance with international law and the respect of international obligations of the organization. As it is noted above, legitimacy and compliance with international law are often coupled, because the belief that the decision or the act of the IO is legitimate depends in part on the respect of its international obligations. Evidence of such relation may be found in the language used by many authors, experts in UN sanctions and even political and judicial authorities. *Inter alia*, Cockayne, Brubaker and Jayakody made a clear connection between the legitimacy of UN sanctions regimes and the respect of the established norms and standards of international law. They argued that legal challenges against UN listing decisions played central role in disrupting the legitimacy of UN sanctions and that legitimacy UN sanctions is closely related to the respect of international standards (especially due process and human rights) (Cockayne et al. 2018)[32].

Thirdly, the phenomenon of legitimacy is a dynamic and continuous phenomenon that is crystallized through smaller processes of *legitimation* and *delegitimation*. American sociologist Mark C. Suchman, provided a useful conceptualization for those *processes.* For instance, he identified three primary *forms* of organizational legitimacy that may feed the *process of legitimation*: *pragmatic* (based on audience's interest), *moral* (based on normative approval), and *cognitive* (based on comprehensibility and taken-for-grantedness) (Suchman 1995, 577-584)[33].

Fourthly and finally, to distinguish the stance of international organizations from that of individual states towards the legitimacy of UNSC's sanctions, the conceptualization of German political scientist Fritz Scharpf, might be quite useful. Scharpf distinguished between *input legitimac*y and *output legitimacy.* While the former refers to elements such as "*democracy, transparency in decision-making, and their law-abiding nature",* the latter is derived from the "*actual work that actors do*"[34]. In other words, it is a distinction between the respect of international law and international standards (e.g. during the decision-making process) on the one hand, and the effectiveness of sanctions in maintaining their intended objective on the other hand (Schmidt) [35].

1.4. Historical overview of the legitimacy of UN sanctions

Over the years, the debate over legitimacy has direct effect on the actual enforcement of sanctions and on the UN practice in general[36]. As it is maintained in the seminal study of Mary O'Connell, many phases of contestations might be identified basing on the way legitimacy was perceived over time and by different actors. The first phase (1965-1990), concerned the case of Southern Rhodesia (1966) and South Africa (1977) and could be called the phase of the "*ultra vires argument"*. During this phase the question of legitimacy was basically about whether the UNSC is lawfully entitled to take sanctions under the provisions of the Charter or not. For O'Connell (2002), such debate ended with a "*general consensus"* that the UNSC has broad discretionary power to decide when and where to impose "*comprehensive* and *air-tight"* sanctions. At that time, it was argued that the situations in place did not fall within the wording of the Charter (the Charter explicitly allows the use of sanctions in three cases: breaches of the peace, threats to the peace and acts of aggression), and that the SC was acting "*ultra vires the Charter"* by sanctioning the "*white-supremacist"* regime of Ian smith or the apartheid regime in South Africa. In this first case, the authority to sanction was justified based on the need to ensure "*peaceful transition from colony to an independent democratic state"* (Southern Rhodesia) and on the basis of grave violations of human rights (South Africa). In the early 90s, the ultra vires debate was replaced by a debate over the effectiveness of sanctions in achieving their stated goal[37]. The second phase (1990-2000) was triggered due to the "*inhuman impac*t" of sanctions against Iraq (1990) and Haiti (1993). According to O'Connell (2002), the debate during this phase was mainly about limiting the power of the SC to use sanctions precisely basing on concerns related to humanitarian law and human rights law. At the time the SC sanctions were called "*sanctions of mass destruction"* and the UN was accused of "*genocide"*. Hence, the issue at stake was to engage the international responsibility of SC for violation of international law, and the main question was about "when" and "how" the power of the SC should be limited[38]. By the end of this phase, the UN practice turned to the use of "*targeted sanctions"* (a.k.a smart sanction) and abandoned the use of "*comprehensive (i.e. indiscriminate) sanctions"* (O'Connell 2002)[39]. Finally, the third phase (2000-today) may be called the phase of the *due process* debate. During this phase, the question of legitimacy of UN targeted sanctions was associated with the respect of the target's right to a *fair trial* and the respect of international standards of *due process*. The Kadi Judgement (European Court of Justice 2008) is considered a *landmark* decision due to its "*significant practical impact"* on the use and practice of UN sanctions[40]. In that judgement, the Court held that the right of individuals to a fair trial and its various aspects (right to access to a court, access to an effective remedy and right to be heard) is already enshrined in international law (e.g. in International Convention of Civil and Political Rights) and in customary international law[41], and that the SC' listing decisions (precisely in the context of Counter-terrorism) violated such rights. As a result, states' implementations measures were declared invalid, members of the European Union were asked not to enforce UN sanctions until the SC provides sufficient guarantees for the target entities and individuals[42], the number of judicial challenges against the SC sanctions increased dramatically, and the effectiveness of UN sanctions was considerably jeopardized. As a reaction the UNSC, made multiple reforms, yet, recent studies proved that such reforms are not enough, and that both the legitimacy and the effectiveness of UN sanctions- especially in contexts other than counter-terrorism are highly vulnerable and seriously threatened by potential and ongoing legal challenges[43].

At this level, it is necessary to note that this paper will answer the following questions: *how do states and regional organizations comprehend the legitimacy of UNSC sanctions? And how could such understanding of the legitimacy UN*

sanctions relate to the proliferation of unilateral sanctions? To answer these questions, the second paragraph of this study will focus on the way regional organizations understand the legitimacy of the SC's sanctions. While the third paragraph will concentrate on the stance of individual states especially the United States of America which is by far the first sender of economic sanctions outside the UN framework. Paragraph four will underline the effect of the proliferation of unilateral sanctions (by both states and regional organizations) on the meta-level (i.e. the world order). And the fifth and last paragraph will be the conclusion. However, before proceeding, it is necessary to clarify the distinction between the legitimacy of individual states and that of international organizations.

1.5. The difference between the legitimacy of IOs and the legitimacy of states

For Hurd (2008), legitimacy is a central preoccupation not only for international organizations (be they universal like the UN or regional like the EU) but also for states, yet they approach it in different ways. On the one hand, we can comprehend the legitimacy of IOs by drawing an analogy between them and Supreme Courts in national orders (Hurd 2019). Like supreme courts, IOs have a political authority in the domestic constituencies in which they are established, however, they lack the operational capacity to enforce their decisions directly. In other words, both IOs and supreme courts rely tremendously on legitimacy more than anything else because they lack the "*coercive enforcement capacity to back up its decisions"*, and because the compliance of their subordinates may only be "*voluntary* and *consensual"*[44]. In the same line of argument, Tzanakopoulos asserted that wording of the ILC Draft Articles on the Responsibility of International Organizations suggests that the UN does not control the conduct of member states *in fac*t (a factual control), but it does control them *in law* (normative control). That is, in order to enforce its own decisions, the UNSC needs state organs to adopt a "*course of action* or to achieve *a specific result"*. This also means that, unlike states who do not have the right (under international law) to exercise normative control over others states, the adverse is true for IOs who function only through the normative control over states (Tzanakopoulos 2013)[45]. Daugirdas explained the idea differently using the concept of *reputation*. She argued that having the reputation of being in compliance with international law constitutes an *important facet of an IO's legitimacy.* That is, when the organization is perceived to be legitimate, that would allow for the cooperation and the supports of its members and would consequently lead to the enforcement of its acts and decisions: "[t] *he perception that an IO is legitimate is, in turn, crucial to the organization's ability to secure cooperation and support from its member states (...) IOs and their member states will take action to prevent and address violations of international law in order to deflect threats to IOs' reputation – and to preserve their effectiveness"* (Daugirdas 2014, 993)[46]. In similar context, Keohane and Buchanan wrote the following: "*The perception of legitimacy matters, because in a democratic era, multilateral institutions will only thrive if they are viewed as legitimate by democratic publics".* Thus, if the support for global governance institutions is undermined, its effectiveness will be impaired (Keohane and Buchanan 2006, 407)[47]. On the other side, certainly the existence of states does not really depend on the legitimacy of their acts much less on their reputation. Having said that, it is also certain that a reputation that the state is not violating international law may remain at stake in certain cases. For instance, the invasion of Iraq in 2003 was a clear violation of international law and precisely of the general rule of the prohibition of the use of armed force in international relations[48]. But before proceeding, the UK and the US made several attempts to obtain a permission from the council and failed with explicit opposition from France, Russia and China[49]. And even following the invasion, the American administration tried to provide legal arguments based on their own interpretation of previous UN Resolutions (e.g. Res 1441)[50].

2. Sanctions legitimacy and the quest of 'legality': the case of regional organizations

In this part, legality is broadly understood as equivalent to the conformity to international law and to the agreed-upon international standards. It is argued that regional organizations take the legitimacy the UNSC sanctions for granted. Nevertheless, saying that regional organizations consider that the UN sanctions are legitimate does not preclude the idea that such organizations are simultaneously pursuing their interests. It is thus argued that concerns related to the legitimacy of UN sanctions were decisive in influencing the use of sanctions outside the organizational framework of the UN (i.e. unilateral sanctions)

2.1. Regional organizations are "guardians" of the UN sanctions: the case of the EU

Legitimacy is crystallized through the "*internalization of external standards"*[51]. Saying that an actor internalized certain external standards means that his perception of what constitutes an interest for him, is "*partly constituted"* by an external force. In IR, such force comes from standards, laws, rules, and norms established within the international community[52]. Accordingly, it is a matter of fact that member states of the EU-who are in the same time member states of the UN- take for granted the legitimacy of the UNSC authority to impose sanctions in order to respond to threat to the peace, breach of the peace, or act of aggression in international relations as it was connoted in the UN Charter (this issue was presumably resolved following the above-mentioned "*ultra vires debate*"). Hurd argued that the "*process of legitimation"* of the UN in general and of the SC in specific, is a "*continuous historical processs"* that started amid the second World War and that is still enduring with the different calls to reform the Council such as the wave of reform proposals (especially those raised in the 50s anniversary of the UN and those raised following the invasion of Iraq)[53]. He argued that the UNSC acquires power when its action is deemed legitimate by different audiences, and vice versa. Thus, if the Council's act is seen illegitimate its power will diminish. In the same line of argumentation, American scholar Inis L. Claude Jr. (1966) stressed the collective aspect of legitimacy. He suggested the concept of "*collective legitimation"* to denote the *social dimension* of the Council's authority over international relations. For Claude, member states perceived the Council as being legitimate, and thus, it is both acceptable and correct to follow its decisions[54]. For instance, the 1960s' Council was endowed with notable power because its actions were perceived as a crystallization of the views of the majority of the countries in the world: "*[t]he Council was authorized to speak and act on behalf of the global community, and thus its utterances and behavior carried more force than had they been carried out by individual Council members"* (Hurd 2008, 7)[55]

Nonetheless, admitting the legitimacy of the UNSC decisions to take restrictive measures under chapter VII is not everything. International actors may admit the legitimacy of the UNSC to take restrictive measures not involving the use of armed force, but may still contest the legitimacy of its decisions on a case-by-case basis. According to Suchman, legitimacy refers to the collective acceptance and support of a given "*pattern of behavior"* regardless of the existence of an isolated reservation or skepticism toward a specific behavior: "*when one says that a certain pattern of behavior possesses legitimacy, one asserts that some group of observers, as a whole, accepts or supports what those observers perceive to be the behavioral pattern as a whole—despite reservations that any single observer might have about any single behavior, and despite reservations that any or all observers might have, were they to observe more*". Indeed, in many instances, particular UNSC'

sanctions were under scrutiny for violating fundamental international standards such as the rule of law, the supremacy of Human Rights and the inderogeability of *jus cogens.* If anything, this proves that legitimacy is a continuous process and that *internalization* of the norm involves also a certain kind of *control* by those who believe in such rule or institution. This idea goes in line with Hurd's assumption that legitimacy is a "*relational social phenomenon"*[56]. For Hurd, the perception of the actor that a rule or a decision ought to be respected, is not arbitrary but is generally stemming from two sources. The first is the "*substance of the norm"* itself. The second is *"the procedure"* by which it was constituted[57]. Also, Franck asserted that legitimacy of international rules is "a *property of a rule or ruler-making institution which itself exerts a pull toward compliance on those addressed normatively because those addresses believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process*" (Franck 1990). The following paragraph highlights the way the EU approaches to ensure the conformity of the UNSC sanctions decisions with the agreed-upon standards of international law.

In general, states acting in concert through their regional organizations are pictured as "*implementers"* of UN sanctions[58], but rarely portrayed as strong "*guardians"* of the legitimacy of such sanctions[59]. This paragraph argues that regional organizations are double-hatted actors who play both roles simultaneously (implementers and guardians). One the one hand, the legitimacy of certain sanctions decisions was under question during the process of the implementation of UN sanctions by member states (articles 25 and 41 of the Charter). On the other hand, while individual states may not make much difference, collective action by members of regional organizations which are at the same time members of the UN, proved to be highly effective and to trigger considerable change in the SC' approach to the use of sanctions. Having said that, contesting the legitimacy of a given sanctions regime or sanction decision, does not preclude the overall belief that the UNSC action under Chapter VII of the Charter is legitimate.

Two case are worth noting here, the first one is the case of UN sanctions against Libya in the 90s following the Lockerbie Affair (Pan Am Flight 103) when the Organization of African Unity (now African Union) and the Organization of the Islamic Conference (now Organization of Islamic Cooperation) played fundamental role in contesting the legitimacy of such sanctions and in influencing the SC's approach. The second case is the ongoing tendency of political and judicial organs of the European Union (EU) to contest and preclude the legitimacy of certain UN listing decisions for violations of human rights and other international standards. Firstly, in the case of Libya, it was widely accepted at that time that the UN was reluctant to respond to repeated calls to lift sanctions even after the compliance of Libya and its readiness to negotiate. Tzanakopoulos argued that, at a certain point, despite the compliance of Libya and its readiness to come to the table of negotiation, the UN Security Council was reluctant to respond and refused to lift the sanctions. Consequently, member states of the Organization of African Unity and member states of the Organization of the Islamic Conference had argued that the Council's continuation of measures against Libya constituted a violation of freedom of religion, and a violation of Chapter VII of the charter because the behavior of Libya was no longer a real threat to the peace (Tzanakopoulos 2013, 78)[60]. In June 1998, the Organization of African Union adopted a Resolution proclaiming the illegality of the sanction regime against Libya and precluding compliance with such regime[61], and because the arguments made in this case were well heeded among multiple actors of the international community, the SC's had to end the sanction regime in order to "*deflect the challenge to its legitimacy"* (Daugirdas 2014, 1014)[62].

Recently, sanctions decisions are being evaluated for respect of the *due process standards*, particularly in accordance with sanctions listing and delisting procedures, whether they guarantee the rights of the target entities and individuals and whether they are conforming to the agreed-upon standards. Since 2008, judicial organs such as the European Court of Justice and the European Court of Human Rights (as well as other national courts in different parts of the world) started accepting judicial challenges against UN sanctions made by individuals and legal entities accused of terrorism (before 2008 courts were routinely dismissing such challenges to avoid the violation of IOs immunities). Seminal decisions mostly by domestic European courts, concluded that the rights and freedoms of target individuals and entities were critically violated by UN sanctions without having the possibility to seek redress. Successful challenges had typically two consequences, holding the state responsible for violating international law obligations and/or declaring the regulation aimed at implementing the SC's as invalid. More practically, the final outcome was that concerned states could not implement the SC decisions, and that has two legal consequences: triggering those states' international obligation for non-compliance with articles 25, 103 and 41 of the Charter which require them to obey and implement the decisions made by the SC; or seeking to trigger the international responsibility of the UN for breach of its own international obligations. Ultimately, States members of the EU choose to disobey the Council and to act in concert through their regional organizations in order to put pressure on the Council to reform sanctions regime in a manner that meets the UN's international obligations[63]. Indeed, the effectiveness and precisely the *universal implementation* of UN sanctions were critically jeopardized since 2008 with the Kadi v. Council & Commission judgement (2008), because that decision triggered a tide of legal challenges in domestic and regional courts by individuals and entities subject to the SC sanctions.

Finally, it is important to note that this phenomenon is still ongoing, in fact, between 2002 and 2017, a total number of 47 legal challenges were brought against the UN sanctions in 12 different national and regional jurisdictions (*inter alia*, in Belgium, Pakistan, Canada, Switzerland, Turkey, United Kingdom, Italy, Netherlands, and even in the United States), they were mostly related to the context of counter-terrorism and some of them were related to the armed conflicts in Congo, Central African Republic, and Iraq. It is also worth noting that the council reaction to this predicament was limited to the establishment of the mechanism of Focal Points (2006) and the Office of the Ombudsman (2009), yet, both were insufficient and did not succeed to contain the increasing number of judicial processes[64]. For example, Thouvenin argued that the UN sanctions are lacking the "*complete legitimacy they should deserve"*. For instance, challenges against the UN sanctions, such as the Nada decision (12 September 2012) and the above-mentioned Kadi decision (European Court of Justice and the Federal Supreme Court of Switzerland), demonstrated that the SC reforms are still wanting and fall short of the "*basic human rights requirements"* particularly in relation to guarantees of "*effective judicial protection"*. Moreover, the "*UN political bodies face inherent difficulties to respect spontaneously' human rights"*. He also asserted that most of the reforms that the SC made to its listing and delisting approach were actually forced by the pressure made by judicial organs, civil society[65] (Thouvenin 2015, 125-128), instead of being the result of a genuine political will to preserve and protect human rights from the part of the council.

2.2. Regional organizations use UN sanctions to legitimize and delegitimize unilateral sanctions

Understanding legitimacy as a subjective belief, an internalized conviction, means that such belief has a direct effect on the actor's behavior, precisely on his strategic calculation of costs and benefits, and on the way he will respond to a given institution or rule. On the other side, maintaining that a rule or institution is legitimate and ought to be respected, generates an "*internal sense of rightness and obligation"*[66] among those to whom it is addressed, but does not preclude the fact that the actor is pursuing his interest within this framework. On the contrary, a legitimate rule is one that is "*behaviorally significant"*, and that means that an actor who held a rule as being legitimate, is one who "*reconfigures"* his interest according to the content of that rule (Hurd, 2008, 31)[67]. This idea can be traced even in the Weberian conceptualization of legitimacy (a.k.a the *belief theory of legitimacy*). Indeed, some scholars have eloquently argued that the utilitarian assumption that actors' actions are intended to pursue a particular interest is not totally excluded by Weber. Merquior, rejected the interpretation according to which the Weberian theory of legitimacy separated actions guided by self-interest from those driven by legitimacy (i.e. drawing a neat distinction between the "*legitimizing behavior"* and "*utilitarian motivations"*). This view assumed that Weber did not recognize utilitarian motives as a source of legitimacy and that his social theory remains at the "*purely normative level"* of the social order. It assumed that for Weber, it is the "*sense of duty*, *voluntary submission"*, and "*genuine acceptance*, of a *given power-order",* as opposed to pure self-interest or fear[68] (this understanding of legitimacy is influenced by the work of Talcott Parson). Contrary, Merquior, as well as other scholars such as Cohen, Hazelrigg, Pope (1975)[69], argued that the mainstream of social studies minimized and even blinded the fact that Weber himself accentuated the role of rational calculation and the pursuit of self-interests to generate compliance. He argued that Weber did not deny or exclude the "*ability of utilitarian motives to sustain validity of social order"*, but was rather *reluctant* in acknowledging that such motives may be a source of validity (Merquior 1980, 93-95)[70].

In the same line of argument, Hurd (2008), stressed the necessity to differentiate between the concept of *interest* and that of *self-interest*. He argued that a social order that is founded on legitimacy -be it national or international- is different from social orders created through coercion or governed by self-interest. Bearing on the theory of Wendt who provided an eloquent distinction between interest and pure self-interest[71], Hurd emphasized on the importance of distinguishing the concept of interest which refers to the choice of means that are presumed to accomplish the desired goals, the concept of self-interest or "*self-interestedness"* refers to a purely "*instrumental attitude"* toward the rules and toward other actors[72]. In International relations, the idea of self-interest is routinely invoked by rationalists who assume that states are egoistic entities pursuing their own national interests; this argument is mainly justified by the "*violent history of international politics"*. For instance, Waltz asserted that at the very beginning, the current international system was created by "*self-regarding"* states, similarly, for Sondermann what drives the action of states in international relations is their *national egoism*, while for George and Keohane, self-interest is the "*core of national interest"* (Wendt 1999, 239)[73].

Like Hurd, Wendt, argued that interest is a "*generic term"* that connotes the choice of means made by actors for the sake of achieving a desired goal. This term is generic because it might be found in different kinds of social orders: in a coercion-based order, a self-interest-based or a legitimacy-based order, all actors have interests in the sense that they all chose means in order to achieve goals[74]. Adversely, the term self-interest bears a particular meaning since it refers to the

instrumental attitude that an actor takes toward other actors and toward the established rules or institutions[75]. Like Jencks, Wendt maintained that "*egoistic and instrumental attitude"* vis-à-vis other actors and toward the rules is the element that distinguished self-interest from interest. Egoism and instrumentality imply the idea that the actor's strategic calculation and his perception of his obligations toward other actors are neither moral nor immoral, but rather amoral: they are mere objects to be used instrumentally (Wendt 1999, 239). In the case of sanctions for example, saying the EU recognizes the legitimacy of the UNSC sanctions, implies a claim that the EU takes for granted the existing structure of relations and institutions established by the UN System, that the EU admits that these rules and relations are accepted and not challenged, and that the EU is seeking its interest by aiming at improving its position within this framework.

The following paragraphs bring about two different ways in which regional organizations used the legitimacy of the UN sanctions to pursue their interests. In the first case, the legitimacy of UN sanctions was considered as a threshold of legitimacy which allows for and *legitimizes* the recourse to unilateral sanctions to achieve foreign policy goals, this was precisely the case of the UE. In the second case, the legitimacy of UN sanctions is perceived as a ceiling for legitimacy in international relations, and thus, only the UN is eligible to use such measures. This was the case of the Association of Southeast Asian Nations (ASEAN) who consistently opposed the use of unilateral sanctions by other states and has, to date, refrained from using unilateral sanctions to achieve its own foreign policy goals.

2.2.1 UN sanctions' legitimacy as a threshold for the use of sanctions in IR

The legitimacy of UN sanctions is enshrined in Chapter VII of the Charter-the only exception to the general prohibition of the use of force in international relations- according to which the Security Council has the authority to impose universal and legally binding sanctions. Biersteker, Tourinho and Eckert argued that the SC sanctions "*carry a legitimating power for their own"*. They assert that such authority is broadly acknowledged by states and other international organizations, and that those actors are typically seeking to justify the legitimacy of their unilateral sanctions on the basis of UN sanctions (Biersteker et al.2016, 12)[76].

On the other side, the significant development in the use of unilateral sanctions by regional organizations (i.e. outside the UN framework) is a relatively new phenomenon. Generally, Charron and Portela found that regional organizations become more willing to use sanctions to achieve strategic goals within their regions outside the UN framework. This is particularly true for sanctions imposed by the African Union, the Economic Community of West African States (ECOWAS), the Organization of American States (OAS) and the Arab League (LA) who strove to "*take ownership of their security governance issues*" they yet, they often seek the infliction of UN sanctions in order to *universalize* and strengthen their own sanctions (Charron and Portela 2016, 101)[77]. Portela, for example, suggested that the EU inflict sanctions before and after the UN sanctions in order to protect their own national security (e.g. sanctions against Libya and the former Yugoslavia) (Portela 2005)[78]. However, what is interesting here is the *self-limiting* that some of those organizations are doing. In the terms of Hurd (2008) self-restraining or self-limiting is one of the characteristics of a social order built on legitimacy as distinguished from an order built on coercion for example, where the actor's decision is subject to external restraint[79]. In fact, Charron and Portella suggest that, for the EU "*the imposition of UN sanctions constitutes a 'threshold' in terms of legitimacy"*.

Put differently, unlike the United States, for example, whose sanctions arsenal is often ready and easily accessible for decision-makers, the EU leaders were often reluctant in taking the lead in the absence of the UNSC mandate because they consider the UNSC sanctions as an "*enabling condition"* for EU sanctions. Thus, the infliction of sanctions by the UNSC is regarded as a *green light* by decision-makers and makes them more willing to take extra-measures[80]. One evidence of the EU prudence lies in the fact that only in the 1990s member states came to agree to use sanctions outside the UN framework. This agreement was later institutionalized by the Common Foreign and Security Policy (CFSP). In fact, the founding act of the CFSP which is the Treaty on European Union 2010, referred explicitly to the UN Charter measures "*the objectives of the CFSP include (...) in accordance with the purposes and principles of the UN Charter"*[81]. Another evidence is the EU's caution to keep sanctions as targeted as possible and to design it in the same way as UNSC sanctions. In fact, unlike the level of severity of US restrictions and the extraterritorial effect of their national law (e.g. Helms-Burton Act of 1996), the EU has generally avoided comprehensive measures. In 2004, this tendency was institutionalized by the "*Basic Principles on The Use of Restrictive Measures*" according to which sanction regimes must be designated in a way to inflict harm only on individuals and entities whose behavior is violating the law, and must do no harm to innocents. As a consequence, there is no current case of EU sanctions or UNSC sanctions that might be labelled as comprehensive regime (Charron and Portela 2016, 115)[82].

While the EU and other regional organizations such as the AU etc. considered the UNSC's sanctions as an enabling condition to inflict unilateral sanctions, the stance of certain Asian countries and Asian regional organizations such as the ASEAN, is totally different.

2.2.2. UN sanctions' legitimacy as a threshold for the use of sanctions in IR

The case of The Association of Southeast Asian Nations (ASEAN), is quite peculiar and worth studying. In fact, since its establishment in August 1967, the organization took an adamant position toward the use of sanctions against its members and against other states. It was persistent in acting within the institutional bound of the UNSC and opposed the infliction of unilateral sanctions by individual states or other regional organizations. Put differently, the ASEAN stance consists of invoking UN sanctions in order to 'delegitimize' the recourse to unilateral sanctions in IR. and to date, the ASENA has never used sanctions of its own, and has publicly denounced Western states' sanctions. For instance, ASEAN countries were the first to oppose EU and US sanctions against Myanmar following the recent grave and systematic violation of human rights within the country. This position was equally followed by many international actors including permanent members of the SC such as Russia and China, who consider that legitimacy of the use of sanctions in international relations should not go beyond the limit of SC measures; in this sense, UN sanctions are regarded as a *ceiling of what they consider globally legitimate measures* (Charron and Portela 2016, 102-118)[83]. It is worth noting that ASEAN was particularly consistent in rejecting unilateral sanctions against Asian countries. An illustrative example here is the refusal of American proposition to impose economic sanctions on Burma for the grave violations of human rights in the late 80s and early 90s following the repressions of the students uprising in 1988 and other grave violations of human rights (e.g. forced labor)[84]. The argument at the time was that sanctions would not solve the problem and that such measures would be counterproductive and would inflict more harm on civilians. At the time, the admission of Burma to the organization had a tremendous impact on its

economic and political relations with the EU which has taken tough economic and diplomatic sanctions against Burma. Nevertheless, despite their strong opposition to EU and US calls for sanctions, countries members to ASEAN were not impervious to the violations happening in Burma. For example, countries such as Malaysia, Thailand and Philippines criticized human rights violations committed by the regime in Burma, but they remain opposed to sanctions. They justified their behavior by the willingness to engage in *constructive* relations with Burma, i.e. by keeping economic ties while at the same time admitting and condemning the violations committed on the Burmese territory, and most importantly, supporting the UN diplomatic efforts and endorsing the U.N. Human Rights Commission Resolution regarding human rights conditions in Burma (Cleveland 2001, 15)[85].

3. Sanctions legitimacy and the quest of effectiveness: the case of individual states

Both states and IOs themselves are aware of the fact that international organizations need states to sustain their actions and even to survive. In other words, while contestation of the legitimacy of IOs is very likely to threaten their very existence, this hypothesis does not apply to states. Among others, Sadurska and Chinkin highlighted the need of all IOs for the domestic administrative organs of states to enforce their decisions. They assert that national administrations of member states provide a "*life supporting system"* to IOs[86]. Adversely, the existence of states does not really depend that much on legitimacy, even though legitimacy of their action plays an important role in their decision-making process (Sadurska and Chinkin 1989, 888). Indeed, while IOs have no option but to develop a reputation of compliance with international law and of respect of their international obligations[87], states still have the option of developing a reputation of being "*tough, irrational*, *isolationist* and also *unpredictable"*[88]. Similarly, Daugirds maintains that the continued existence of IOs depends on their member states, which makes the *stakes of being perceived* as being legitimate, "*typically higher"* for IOs than for individual states (Daugirds 2014, 1010)[89]. So, why would the state choose to join or to remain engaged with IOs?

Hurd (2008) asserts that states admit the legitimacy of IOs because legitimacy may practically change the rules of the game, i.e. the environment of the decision-making for all actors (including those who do not engage with the organization). Thus, a simple calculation of costs and benefits would eventually induce states to engage with the organization in order to achieve their strategic goals, because the alternative would be more costly[90]. However, this also means that states, as sovereign entities, still enjoy the option of abandoning the organization if they believe that such organization does not offer a satisfying tradeoff between multilateralism and other alternatives such as unilateralism[91]. Koremenos, Lipson, and Snidal argued that states are willing to remain members of the IO as long as they have gained from their membership *over the long-haul,* otherwise they will simply abandon them (Koremenos, Lipson, and Snidal 2001, 768)[92]. Similarly, Hurrel says that powerful states are looking for institutions that offer them the "*best trade-off between effectiveness on the one hand and the maximization of control and self-insulation on the other hand"*[93]. Thus, they will obviously have little interest in joining or remaining in an institution that does not satisfy such desire. As for the stakes for the less powerful actors, IOs are often valued because they help keeping the hegemon at least partially integrated within institutions and within the borders of legality (Hurrel 2005, 47)[94].

The first paragraph argues that the judicial challenges targeting the UN sanctions at national and regional courts and

the political pressure by other actors such as regional organizations, has jeopardized universal implementation of sanctions, and has also emboldened powerful actors such as the US to rely more on unilateralism in the use of sanctions. The second paragraph is a case-study of the gradual increasing in the recourse to unilateral sanctions outside the UN framework. It underlines the shift in the political rhetoric of US officials regarding UN sanctions and it puts under light the expansion of the activities of the Office of Foreign Assets Control (OFAC) since 2001.

3.1. Ineffective sanctions are deemed illegitimate

As mentioned in the introduction, the limited effectiveness of UN sanctions was exacerbated after the abandonment of the comprehensive sanctions regime following the apocalyptic humanitarian costs of sanctions imposed on Iraq during the 1990s. On the one hand, in the current moment, all UN sanctions regimes are targeted regimes (smart sanctions) that are addressed to individuals and entities and not to entire societies; this turn has expensive costs in terms of effectiveness of such measure and led the UN to gradually losing the cooperation and support of certain member states, especially major powers. Bierstecker, for instance, signals the *rhetorical trap* in which decision-makers fall by advocating for "*broader"* and "*crippling"* sanctions as a response to the limited effectiveness of targeted sanctions (Bierstecker 2015, 173)[95]. It is worth noting here the phenomenon of seeking effectiveness by imposing blunt comprehensive sanctions instead of a more targeted sanctions, falls within what Lopez called "the *conventional theory underlying the imposition of sanctions"* (i.e. the greater is the economic pain caused by sanction on the target, the higher is the political profit for the sender) (Lopez 1997, 327-328) [96]. Galtung described those comprehensive indiscriminate sanctions as a "*naive theory"* of sanctions because it assumes that the economic hardship will turn the population of the target state against their authoritarian regimes, an argument which proved to be invalid in most of the cases (Galtung 1967, 380)[97].

On the other hand, the legitimacy of UN sanctions is currently under scrutiny of national and domestic courts (especially European courts), and in many instances the listing decisions made by the SC were held to be violating peremptory norms of international law and other international standards. As a result, courts ordered the non-implementation of such decisions by member states, and the universal implementation of those decisions was seriously hampered. Indeed. according to Thouvenin, concerns related to human rights violations and the continuous pressure by judicial organs and civil society constitute not only an *"impairment"* of the efficiency of UN sanctions[98], but also, an incentive for some states to use sanctions unilaterally: "*some actors have a tendency to go back to old methods when they conclude that targeted sanctions proved inefficient".* An illustrative example here is the case of American sanctions against Iran, assimilated to "*economic blockades"* (Thouvenin 2015, 128-129)[99].

While legitimation is a process that creates an internalized belief that the rule or the institution ought to be respected, delegitimation signals the end of such internalization. Saying that the US internalization of the SC's legitimate authority to ensure international peace and security through the use of restrictive measures other than the use of armed force, requires first a definition of what internalization means. Hurd proposed two empirical tests to measure internationalization. Firstly, one might say that a process of legitimation occurs when the content of a given rule or the authority of a particular institution are taken into consideration by states when they are seeking their interests. Thus, if we scrutinize the state's behavior

when it pursued a certain goal, and found out that established rules and institutions were *taken for granted* when acting instrumentally, that means that the state internalized the belief that the given rule or intuitions is legitimate. Secondly, it is possible to say that the process of legitimation occurs when we notice that certain actors attempted to influence other states by way of advantages and sources derived from the multilateral institutional environment (Hurd 2008, 32)[100]. The following paragraph is an attempt to capture the US stance *vis-à-vis UN* sanctions. It aims at underlining the tendency of the US to act outside the institutional framework of the organizations and at highlighting the shift in political rhetoric of US officials regarding the utility of UN sanctions.

3.2. The proliferation of unilateral sanctions: the case of the US

This paragraph argues that over the last two decades, the US tended to achieve its foreign policy goals outside the institutional framework of IOs, and that the official stance regarding the effectiveness of UN sanctions has changed dramatically.

3.2.1. The shift of the US foreign policy toward unilateralism

Recalling the above-mentioned argument of Hurrell, the choice by the US to act within the bounds of multilateral institutions depends largely on balancing effectiveness and sovereignty. He argued that states, namely the powerful ones, are typically seeking the "*best trade-off between effectiveness on the one hand and the maximization of control and self-insulation on the other"* (Hurrel 2005, 37)[101]. Indeed, the fact that the US considers UN sanctions as ineffective, is translated into the excessive recourse to unilateral sanctions which have exponentially increased in the last two decades. One can argue that the recourse of the US to unilateral sanctions since the end of the Second World War until the early 1990s was not related to the limited effectiveness of UN sanctions, but was rather justified by the inability to act through the UNSC (the Council was paralyzed by the right to the veto). In fact, following the end of the cold war and the fall of the Soviet Union, the SC was unlocked and international cooperation flourished. Hufbauer, Schott and Elliott, unveiled the fact that the US recourse to unilateral sanctions during the 1990s (a.k.a sanctions decade) decreased remarkably: *"the extent of international cooperation in sanctions episodes increased sharply with the end of the Cold War, and the proportion of unilateral US sanctions declined sharply*" (Hufbauer et al. 2007, 57)[102].

Nevertheless, Hurrell (2005) argued that the US administration developed a practice of acting outside the institutionalized organizational framework bound by international law, and that recent American administrations have sought to rely gradually on its national law to achieve its foreign policy objectives. In relation to issues such as the drug and human rights, the US uses "*certification"* to influence other states conduct; for matters related to democracy and nuclear weapons the US used tough and far-reaching unilateral sanctions with little space for accountability; finally, even the US domestic courts were acting as if they were international courts in some circumstances. Hurrell also recalls Kirsch's conceptualization of "*indirect governance"* (2003) to denote the US attempts to avoid the limitations that may be imposed by international law in areas such as the security regulation, aviation standards and the development of the internet (Hurrel 2005, 38)[103]. Similarly, E.H. Preegg signaled the phenomenon of the increased involvement of US domestic constituencies in the use of

sanctions, and affirmed that, mostly, the rise of unilateral actions comes to satisfy such demands (E.H. Preegg 1999)[104]. Also, Hufbauer, Schott, Elliot and Oegg revealed the increased involvement of the US congress and sub-federal players as well as NGOs in the imposition of unilateral sanctions on other states, entities and individuals ((Hufbauer et al. 2007, 135)[105]. It is important however, to note that despite the fact that the *Trump-era* mirrors a backsliding of US priorities and policies toward multilateral institutions (e.g. withdrawing from the from the United Nations Educational, Scientific and Cultural Organization (UNESCO) in October 2017, from the U.N. Human Rights Council and the U.N. Economic and Social Council (June 2018), from the Paris Agreement on Climate Change (June 2017), from the Open Skies Treaty (May 2020), and from the World Trade Organizations (July 2020)), the US attempts to tear off its multilateral obligations and to get around the constraints of international law did not come once in the blue night. George W. Bush (2001-2009), for instance, withdrew from the Kyoto Protocol on Climate Change, the statue of the International Criminal Court and even invaded Iraq without having authorization from the Security Council in a clear violation of the UN Charter. What is striking with this respect is that, even during the presidency of Barack Obama whose administration showed no hostility toward multilateral arrangements, the number of unilateral sanctions taken by the OFAC was increasing steadily and progressively. This might be sufficient proof that what the US is looking for is effectiveness and that its decision to take more or less sanctions depends on the effectiveness of the measures undertaken[106]. In fact, in a time where the effectiveness of UN sanctions was increasingly hampered with around forty legal challenges in domestic and national courts (2008-2018)[107], the OFAC actions increased tremendously to reach 158 sanctions-related acts in 2019 (compared to 38 actions in 2001)[108]. At this level,, it is worth noting that this shift can be also captured in the public statements of US officials over the last few decades.

3.2.2. The Shift in the political rhetoric vis-à-vis UN sanctions

Almost a decade ago, Morgan and Bapat asserted that multilateral sanctions were typically considered more effective and useful than unilateral sanctions: "*[p]olicy makers frequently argue that multilateral sanctions are more likely to induce a target state to alter its behavior than are unilateral sanctions*. (…) *policy makers often advocate the use of multilateral sanctions over unilateral sanctions, arguing that a coalition of states can create stronger signals to a target government and impose greater costs if the target does not comply with the senders' demands"*. In the case of the US, high-ranking officials in the US administration such as the former Secretary of State Condoleezza Rice and the former Vice President Richard Cheney did not only advocate for the necessity to recourse to multilateral sanctions, but they even admitted publicly the limited effectiveness of unilateral sanctions. For example, Condoleezza Rice admitted in 2006 that the unanimous vote against North Korea demonstrated the "*unity of purpose"* and sent a powerful signal to North Korea and would serve as a credible and powerful tool to induce it to change its behavior. On the other side, US former vice president Cheney described sanctions against Cuba as *unwise* and declared that unilateral sanctions "*almost never work"* (Morgan and Bapat 2009, 1075-1076)[109]. As for sanctions against Iran and the necessity to act through the Security the Council, the US vice president said the following: "[w]*hen we impose unilateral sanctions, unless there's a collective effort, other people move in and take advantage of the situation and you don't have any impact, except to penalize American companies. We've got sanctions on Iran now. We may well want to go to the UN Security Council and ask for even tougher sanctions if they don't live up to their obligations under the International Atomic Energy Agency Non-Proliferation Treaty. We're working with the Brits and the Germans and the French, who've been negotiating with the Iranians. We recently were actively involved in a meeting in*

the International Atomic Energy Agency. There will be a follow-up meeting in November to determine whether or not Iran's living up to their commitments and obligations. And if they aren't, my guess is then the board of governors will recommend sending the whole matter to the UN Security Council for the application of the international sanctions"[110].

Nonetheless, this stance shifted dramatically over the last few years, the statements of the current US president are illustrative with this respect. For instance, in December 27th 2016, president Trump described the UN as being *"a club for people to get together, talk and have a good time"*. Later, in an interview in the same year he described the US relation with the US as a waste of time and money: "*[w]hen do you see the United Nations solving problems? They don't. They cause problems*, he said. "*[i]f it lives up to its potential, it's a great thing. And if it doesn't, it's a waste of time and money"*[111]. Moreover, in her message addressed during the Commemoration of the 75th Anniversary of the UN Charter (June 2020), the US ambassador to the UN conveys in a very straightforward manner the stance of the US toward the UN. *Inter alia*, she informed the Secretary General and the UN officials that an institution that is not effective should be dissolved: "*UN institutions that don't live up to this standard should be reformed or shuttered*"; and she asserts that the UN is not responding to the aspirations of the international community, and that multilateralism is intended to serve the interest of sovereign states and not an aim at itself: "*multilateralism is not an end in itself*, but is a *tool in hand of sovereign states"*. Also, she highlights the lack of accountability, transparence, rule of law and the limited efficiency, effectiveness and independence of the UN institutions. Not only that, but the US ambassador claimed that ideals of the UN Charter such as HR and dignity etc. were inspired by principles and values that *animate the founding documents of the US,* and affirmed that the US, as a founding member of the UN, deserve a transparent, professional, rules-based organization, and is expecting the UN to uphold those values[112]. In brief, the statement of the US ambassador goes in line with the current foreign policy approach of the American administration, roughly translated through slogans such as "*America first*" and "*Make America Great Again*". Moreover, an illustrative example of the US tendency to shift outside the UN sanction framework is reflected through the recent behavior of the US mission within the Security Council[113]. American Political scientist Paul Poast argued that the "*miserable*" failure of the US draft Resolution at the UNSC (2 yes votes, 2 rejections and 11 abstentions) was actually intentional and goes in line with the Trump administration's strategy. Knowing that this is the second time for the US administration to take such approach[114], Poast argued that prior to 2018, different US administrations used all means-including buying votes and manipulating the IMF-to avoid failure in the SC[115], and this means that the Trump's administration was trying to make a: *"look how much the rest of the world is against us"* kind-of-statement, which fits his view that the UN is a useless, and backs his *America First* mentality[116]. Indeed, a scrutiny of all US-backed resolutions from 1945 to 2015 revealed that failure was very rare simply because states, including the US, tend to withdraw draft resolutions that are likely to fail: *resolutions likely to fail, particularly miserably, are never brought to a vote*[117].

Put differently, the US administration under Trump is following the inverse of what is considered to be a conventional and orthodox approach of acting through the Security Council. In fact, Paost, Scherz and Zysset (2019), Allen and Yuen (2013) as well as Voeten (2005) assert that, by bringing a draft resolution to the UNSC, states seek to acquire the Council's approval because it is considered as a "*symbol of legitimacy*"[118]. Voeten, for example, argued that, since the Persian Gulf War, states "*behaved "as if" it is costly to be unsuccessful in acquiring the legitimacy of the UNSC*". Hence, in order to legitimize their own actions, precisely in relation to the use of force, states sought "*political reassurance"* through the approval of

the Council and treated such approval as a means to *legitimize* their actions[119]. However, the US' current approach seems to dismiss such legitimacy and to seek the *disapproval* of the Council rather than its approval. The disapproval of the SC here seems to serve the intention of the US to act unilaterally. For example, the US secretary of state, described the SC refusal to approve the draft as *inexcusable*, while Ambassador Craft said that her *'patience is running very thin'* and that the US will act unilaterally using all means to extend the embargo on Iran: "*[i]n the coming days, the United States will follow through on that promise to stop at nothing to extend the arms embargo"*[120]. Those statements reaffirm the analysis of Poast who considered that the vote on the draft resolution comes in line with the Trump administration approach to the SC and the message that it conveys to different audiences is likely to be *the exact message the administration wants to send* (Poast 2020)[121].

Though the limited effectiveness of UN targeted sanctions constitutes an important incentive for states to act unilaterally, the recourse to the use of sanctions without having the authorization of the UNSC has become a widespread phenomenon. Unlike powerful states such as the US, states with limited economic capabilities and relatively small political weight may have different motives to act outside the UNSC framework. The following paragraph is an attempt to explain their behavior and to underline the effect of such phenomenon on the international order as a whole.

3. Centralized sanction, decentralized sanctions and the World Order

Undoubtedly, the proliferation of unilateral sanctions constitutes an emergent and notable development in the landscape of sanctions[122]. One may say that pulling the rug from under the feet of the UNSC as the only legitimate authority who is entitled to use force in order to enforce the values and objectives of the Charter, is likely to have considerable effects on the structure of the international legal order. Structural change is likely to be crystallized by a change in the way the international society is organized and compliance with international norms is generated. Hurrell has already signaled the *deformed* character of the contemporary world order and argued that *deformity* is one of the sources that make legitimacy problematic on the international level. By deformity he meant that pre-World Wars order did not vanish by the arrangements made after the Second World War but was rather *camouflaged*. He also, argued that the tendency to act unilaterally, which is often illegal, and the inaptitude of international institutions to constrain such acts, are aspects of this deformed character of the world order: "*deformity is evident in the limited capacity of the international law and institutions to constrain effectively the unilateral and often illegal acts of the strong. In this sense we are moving not beyond sovereignty but rather returning to an earlier world of differentiated and more conditional sovereignties"* (Hurrell 2005, 57)[123]. The following paragraphs will attempt to underline some features of the current world order, provide a possible explanation for the recourse of small states to the use of unilateral sanctions, and examine the possible alternatives of a legitimacy-based social order.

4. Centralized sanction, decentralized sanctions and the World Order

4.1. The centralization of the use of force in the post-World War Order

The international order established after the end of the Second World War and crowned with the establishment of the UN, was mainly founded on a general prohibition of the use of force in international relations (IR). According to Brunnée

and Toope, Article 2(4) of the Charter established a sweeping prohibition of the use of force in IR, and constitutes the core of the structure of contemporary international society. They affirm that such a primary rule has two exceptions: the first is the collective security framework (Chapter VII's collective security), the second is self-defense (article 51) (Brunnée and Toope 2009, 18)[124]. Indeed, Chapter VII of the Charter comes to "*centralize*" the use of force by giving the SC a broad and exclusive authority in matters related to breaches of or threats to international peace and security and acts of aggression[125]. That means that, on the one hand, that the SC is entitled with the power to determine and authorize the recourse to armed or non-armed force (measures not involving the use of armed-force). On the other hand, it means that states cannot resort to the use of force without having an authorization from the SC.

Orakhelashvili argued that unilateral sanctions, precisely those used by regional organizations such as the European Union, lack "*legal and constitutional justification*s", and are very likely jeopardizing and hijacking the universal framework of peace and security established by the UN Charter. On the one hand, he argued that the UNSC legal legitimacy stems from the "*pattern of ordering*" provided by the Charter. Firstly, sanctions must be adopted by the SC-the organ that is charged by the Charter and is intended to secure broader compliance. Secondly, the rationale behind the use of sanctions in IR is to produce a "*strangling and isolating*" effect on the target without leaving an option to find alternative partners to escape sanctions. Thirdly and finally, the international responsibility of states will be precluded and they will be immune from legal claims of the target (Article 103 of the Charter). All in all, the operation of this "*complex arrangement*" settled by the Charter, depends on the presence of all these three elements. It is thus obvious that unilateral sanctions imposed do not fit such a pattern and are at best, lacking legal and constitutional basis. On the other hand, he stressed the effects of unilateral measures on the functioning and the effectiveness of the multilateral framework established by the Charter: *[t]here is every reason to suppose that a policy and agenda adopted by a limited number of States as an alternative to that adopted by a universal organization risks hijacking the universal organization's efforts, entails the duality of policies in relation to the relevant crisis, and is therefore destructive of the effectiveness of the entire policy underlying the response to the crisis*. As an evidence, Orakhelashvili draws comparison with the collapse of the League of Nations during the interwar period. At the time the League acted in concert and imposed sanctions on Italy, yet the secret engagement of France and UK with Italy in the Hoare-Laval Plan, undermined the League's efforts. Even though the Plan was aborted and the British Foreign Secretary had to resign, its overall effects were devastating because the Plan was conceived as a "*breach of faith toward the League of Nations and its members, a source of relief in Germany, and the unmistakable indication that "the effect on the members of the League and on their capacity for collective resistance to aggression was still more crushing*". Similarly, to what is noted in the previous paragraphs, he affirmed that EU unilateral sanctions against Iran and Syria, as well as the recent developments led by the Kadi decision, are jeopardizing the role of the UN and the effectiveness of its collective security framework. On the one hand, those developments are likely to confuse target states/actors (i.e. in terms of what it is expected from them) and damaging the "*uniform vision within the international society*" (what is the message signaled through the use of sanctions). On the other hand, the long-term consequences are likely to erode the entire normative framework of the use of sanctions, i.e. undermining the "*consistent normative basis on which the UNSC can properly calculate cause of action, necessity and proportionality of future measures"* (Orakhelashvili 2015)[126].

At this level, it is necessary to admit that regardless of their disputable legal and constitutional basis, and despite their

potential negative effects on the UN efforts, unilateral sanctions are gaining the ground and are becoming the tool of choice even for relatively small states.

4.2. The decentralization of the recourse to sanctions in IR

The use of unilateral sanctions, precisely those aimed at the protection of human rights, has become a universal phenomenon involving various states- even those who have a small economic capacity and a political weight. *Inter alia*, in early July 2020, the UK Foreign Secretary Dominic Raab announced that the government will be introducing its first human rights sanctions (‘autonomous designation’) before July 2020. Also, Switzerland, which is not a member of the European Union has its share of sanctions. For instance, in June 2020, the country-imposed asset freeze and travel ban on 6 Nicaraguan officials for ‘*on-going violation of Human rights, democracy and the rule of law*’. Equally, other European states non-members of the European Union are getting involved in the EU sanctions, for instance, North Macedonia, Serbia, Montenegro, Albania, Iceland, Liechtenstein, Norway, Ukraine, Moldova and Georgia are now imposing sanctions on Syria and Nicaragua. Finally, many Australian and Canadian Politicians are increasingly invoking the imposition of *Magnitsky sanctions* on officials from China and Hong Kong (for instance last June 12 Senators addressed a letter to Prime Minister Trudeau calling for such sanctions)[127].

MacAdam, Tilly and Tarrow (MTT) used *certification/decertification* as synonyms of *legitimacy/illegitimacy*[128]. In the context of contentious politics, processes of certification or decertification, are a powerful mechanism that shapes the way actors make their claims, and that may produce changes both at the micro-level and macro-level[129]. The process of certification, for instance, provides the actors with *stability, intelligibility* and, most importantly, *recognition*. Precisely, certification refers to the *validation of actors' performances and their claims by external authorities*, while decertification connotes the withdrawal of such validation. They argue that such processes depend on the existence of a *previously established conceptions of valid political actors* as well as the existence of *models, stories and practices associated with previous episodes*[130]. In the context of sanctions, the concept of *certification* may explain the decision of small and relatively weak states such as Liechtenstein, or Albania to inflict unilateral sanctions outside the UN mandate. MTT argued that certification and *recognition* are closely related, and that processes of certification often imply an *unfortunate psychological* dimension: *certification is chiefly a way to satisfy a psychological need*[131]. They assert that certification processes in IR have at stake more than the mere *national self-satisfaction* but most importantly the *recognition* from its international environment (MacAdam et al. 2001). The work of Swedish political scientist Erik Ringmar is illustrative with this respect. Ringmar accentuated the *social character of identities* in order to explain why a weak and marginal country located in Northern Europe (Sweden) dragged itself into the Thirty Years' War and invaded the Roman Empire, even though such war was primarily fought in Central Europe (1630). For the authors, this behavior is due to the *relational character of identity,* he argued that actors are not the sole determinant of their own identity: “*people alone cannot decide who or what they are, but any such decision is always taken together with others. We need recognition for the persons we take ourselves to be, and only as recognized can we conclusively come to establish an identity. The quest for recognition will consequently come to occupy much of the time of people or groups who are uncertain regarding who they are. We all want to be taken seriously and be treated with respect; we all want to be recognized as the kinds of persons we claim to be. Yet recognition is rarely*

automatic and before we gain it, we are often required to prove that our interpretations of ourselves indeed do fit us. In order to provide such proof, we are often forced to act – we must fight in order to convince people regarding the applicability of our self-descriptions" (Erik Ringmar 2007, 13-14)[132].

Nevertheless, this decision to enter the war which was primarily driven by selfish and limited motives (recognition and self-identification) had long-term and far-reaching effects on the world order as a whole. In fact, the Swedish intervention (1630-1635) was a major turning point in the war because the invasion of the Roman Empire had not only changed the direction of conflict and made Sweden one of the great powers in Europe for almost a century, but had also more fundamental and long-term political consequences: it triggered one of the most important structural changes in the international legal order (The Peace of Westphalia 1648)[133]. Indeed, the Treaties of Westphalia did not only offer Sweden the long-wanted *diplomatic credibility*, but also established a new category of international actors: *Equally Sovereign States*. On the one hand, those treaties led to the transformation of the international society into a *Club of States* comes along with the delegitimation of the *Empire* as a form of political arrangement[134]. On the other hand, it changed the face of the international society forever by marking the beginning of certification/ decertification processes of who is eligible to be called a state and who is not, not only in Europe but in the entire globe: "*a new set of powers were established, constituting both the certified major actors on the European scene and, collectively, the certifiers of arrivals and departures on the scene. For two centuries thereafter, successors of those powers continued the process of certification, and eventually extended it to all the world's states*" (MacAdam et al. 2001, 146)[135].

The next paragraph argues that the current world order established in the aftermath of the Second World War, is primarily a legitimacy-based order. It also underlines the other possible alternative of the current model: a coercion-based order and a self-interest-based order.

4.3. The alternatives to a legitimacy-based World Order: legitimacy, coercion and self-interest

A legitimacy-based social order, is an order where different actors (subjects to this order) believe that the rules and institutions of such order "ought to be respected and deserve their deference". Indeed, the idea that the post-World Wars order is a legitimacy-based order is well established within the political, legal and philosophical debate[136]. It is generally admitted that the end of the Second World War established a new legitimacy-based order crystalized through a continuous process of legitimation of the United Nations' Security Council[137]. For instance, scholars of international law often argue that the law that regulates international society is mostly respected[138]. *Inter alia*, in his book entitled *How Nations Behave*, renewed American legal scholar Louis Henkin wrote: "*[a]lmost all nations observe almost all principles of international law and almost all of their obligations almost all the time*"[139].

AT this level, it is necessary to note that there are two other possible alternatives for a legitimacy-based social order: the first is coercion and the second is self-interest. Indeed, Hurd conceptualized three modes of social control: legitimacy, (pure) self-interest and coercion (he also called them "*ideal-types" and* "*grand concepts of sociology"*)[140]. He said that each mode has different mechanisms to generate compliance of actors with the agreed-upon rules within a given society,

i.e. a legitimacy-based social order is distinctive in terms of the behavioral and structural outcomes it entails, from an order that is based on coercion or on pure-self-interest[141]. On the one side, *coercion* is defined as a "*relation of asymmetrical physical power among agents"*; it is an imbalanced relationship that aims at changing the behavior of the weaker party. Hence, in a social system that relies primarily on coercion (e.g. the Hobbesian model), it is fear and compulsion that produce acquiescence and obedience. Finally, such order is founded on both "*threat"* and "*force"* (i.e. what motivated the ruled party is the threat of sanction, and what guaranteed the stability of the order is the absolute power of the ruler). Contrary, the operative mechanism in legitimacy resides within the process of internalization of "external standards" by the actor. Ironically, experience proved that coercion and repression are both insufficient, often backfire and produce resistance and indignation, and that coercion and sanctions are both too costly to maintain social control, and to achieve a stable social order[142]. On the other side, a self-interest-based order, is grounded in the Kantian idea of "*peaceful society"*[143]. In such order, actors believe that compliance with the rule is more likely to maximize their interests, and that the decision to follow the rule is the outcome of a rational calculation of benefits and potential losses (i.e. an instrumental assessment of both acts of compliance and of noncompliance). Within this order, the ruler plays the role of a regulator: his mission consists of guaranteeing that the act of compliance would be the *"most rationally attractive option"*. The distinction between legitimacy and self-interest lies mainly in the distinction between interest and self-interest, because self-interest implies an *instrumental attitude* vis-à-vis the rules and other actors[144]. It is, of course, necessary to acknowledge that all the three modes/ideal types are entangled. For instance, what gathers self-interest and legitimacy, is the fact that the behavior of the actor is the result of his *self-restraint* (in a coercive order his act is generated by an *external restraint*). Also, all the three ideal-types are similar in that they all maintain that states are pursuing something*: a goal*[145]. Additionally, both self-interest and coercion emerged within the utilitarian tradition and both approaches involve mechanisms that are used to predict and compare the benefit that may result from different options, be it the result of a threat or a choice that is manipulated by other actors[146]. Finally, in a coercion-based order and in an order that is based on self-interest, the decision to comply with the rule is the outcome of an act of *prudence*[147] (the difference lies in the impact on the actor) (Hurd 2008, 37-40)[148].

Therefore, it would not be plausible to say that the international legal order established after the end of the Second World War and institutionalized with the creation of the UN, was entirely a legitimacy-based order. On the contrary, every social order encompasses all the three modes, yet what makes difference is the prevailing mode. Tilly, for instance, argued that almost all modern liberal democratic states were legitimated by coercive means, and so are the most legitimate social relations (Tilly 1992, 5)[149]. Hurd in turn, stressed the complexity of the relationship between coercion, self-interest and legitimacy, and asserted that almost none of those modes exist in a pure and isolated from[150]. In his book *After anarchy: legitimacy and power in the United Nations Security Council,* he denotes a world where the power and the legitimacy of the UNSC plays a central role. He assumes that the very existence of an *authoritative institution* such as the Council, puts constraints on states interactions and refutes the *international anarchy* thesis[151]. According to American political scientist Helen Milner (1991), the classical understanding of anarchy in IR scholarship refers to the *absence* of a centralized authority at the international level[152]. It means also that, while anarchy and authority are mutually exclusive, legitimacy and authority are complementary[153]. Put differently, saying that the UNSC action under Chapter VII is legitimate, and that the Council has the power and authority in matters related to the use of sanctions in IR[154]. For Hurd, the legitimate authority of the Council within the international society precludes the anarchic characterization of IR. (Hurd 2008)

However, and regrettably, with the growing persistence of national and domestic jurisdictions to evaluate the SC's 'sanctions decisions and to declare it invalid for violating of international law; the development of a new phenomenon of *disobedience* among European countries pressed by national courts[155]; the continuous contestation of sanctions legitimacy by political actors for not being not effective; the tremendous proliferation of unilateral sanctions and the limited options available to hold the sender accountable[156]; and the vulnerability of different sanctions regimes and the *ad hoc and incremental* approach of the Council to respond to allegation contesting the legitimacy of its actions[157], it is hard to deny that the Council's legitimacy, and *a fortiori* its authority are declining, and it's inevitable to say that all those alarming signals are evidence that the future of sanctions' practice is grim.

5. Conclusion

This paper underlined the legitimacy of sanctions imposed by the United Nations Security Council under the provisions of Chapter VII of the Charter. The phenomenon in question lies within the intersection between legality and international politics. On the one hand, the Council has a *hybrid*[158] *character i.e. it is an entity that is both legal and political, and its recourse to the use of sanctions is a "matter of politics as much as law"* (Cokayne et al. 2018, 7)[159]. On the other hand, legitimacy is "*fundamentally understood as a subjective belief that travels across diverse political settings*", and that is partly contingent upon the respect of established norms and rules.

The first part, distinguished multilateral sanctions from unilateral sanctions. The distinction has normative rather than a descriptive criterion, that is, regardless of the scope of the measures undertaken and of the number of actors, multilateral sanctions are legally defined as sanctions imposed by the SC or basing on authorization from the SC, while unilateral sanctions is a residual category that encompasses all similar measures. Accordingly, sanctions imposed by international regional organizations such as the European Union or the African Union falls within the category of unilateral sanctions. It also highlighted the confusion that mars the concept of legitimacy, exposed the way the concept is understood in different disciplines and adopts an operational definition that may serve the purpose of this paper. Legitimacy here is treated as a "*subjective belief that influences the actors' behavior and their understanding of what constitutes an interest for them"*. However, this belief is partly dependent on respect for international norms and standards. Finally, this paragraph traces different phases of questioning and challenging the legitimacy of UN sanctions.

The second part examined the way the EU comprehends the legitimacy of the SC sanctions in the light of the broad concept of "interest". It shows that the organization is a double-hatted actor. On the one hand it admits the legitimacy of the SC authority to inflict sanctions and considers the presence of UN sanctions as a "threshold" of legitimacy to impose their own unilateral sanctions. On the other hand, it plays a key role in controlling and challenging the legitimacy of sanctions for violation of international norms and standards, namely those in relation to the respect of due process guarantees and human rights. National and regional courts took the lead in exercising this control which had a serious effect on the effectiveness and the universal application of UN sanctions.

Contrary to the EU, other regional organizations such as the Association of Southeast Asian Nations and some other European countries, admits the legitimacy of the SC authority to impose sanctions and considers such legitimacy as a "ceiling" of legitimacy and considers unilateral sanctions as illegal measures.

The third part put under light the behavior of powerful states such as the US. It argued that the issue of effectiveness

of UN sanctions prevailed over the US stance vis-à-vis the legitimacy of sanctions. Firstly, it stressed the decline of the effectiveness of UN sanctions resulting from the shift of the UN toward the use of targeted sanctions, and from the persistence of national and regional courts (especially EU courts) to review and preclude the validity of the UN sanctions. It is thus argued that the limited effectiveness contributed to the proliferation of the US unilateral sanctions and led to a shift in the US position toward the UNSC and its ability to maintain and fulfil the expectation of member states and the requirements of the charter.

The fourth and final part underscores the phenomenon of the proliferation of unilateral sanctions imposed by both states and regional organizations without having the authorization of the council. Firstly, it examines the proliferation of unilateral sanctions in the light of the overall framework of the use of force in international relations. Secondly, it attempts to explain the behavior of smaller states who also want to take their share of unilateral sanctions. Thirdly and finally, it highlights the possible alternatives of a legitimacy-based international order (i.e. an order that is primarily based on “pure” self-interest, or a Hobbesian order that is governed by coercion). Ultimately, it should be noted that this dramatic change in the landscape of the use of sanctions in international relations creates new challenges: what criterion should be used to draw the line between unilateral sanctions aiming at upholding human rights and preserving international peace and security and those seeking restraint national interests? How could we hold states accountable for damages caused by sanctions and how to preserve the rights of those affected especially when sanctions are broad and far-reaching? What is the effect of the proliferation of unilateral sanctions on the peace and security framework established by the UN Charter? Before answering these questions, we need first to account for the legitimacy and the legality of unilateral sanctions.

注

1 See generally: Marossi, Ali.Z. and Bassett, Marisa R. *Economic Sanctions under International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences*. TMC Asser Press, the Hague. (2015): v-vi See also: Helms, Jesse. "What sanctions epidemic? US business' curious crusade." *Foreign Affairs* (1999): 2-8.

2 Biersteker, Thomas J., Marcos Tourinho, and Sue E. Eckert. "Thinking about United Nations targeted sanctions". In *Targeted sanctions: the impacts and effectiveness of United Nations action.* - Cambridge: Cambridge University Press, 2016. - P. 11-37 at 30.

3 Cockayne, James, Rebecca Brubaker, and Nadeshda Jayakody. *Fairly Clear Risks: Protecting UN sanctions' legitimacy and effectiveness through fair and clear procedures*. United Nations University (2018):1-6

4 Marchi-Uhel, Catherine. *Report of the Office of the Ombudsperson pursuant to Security Council resolution 2368*. S/2017/685 (7 August 2017). Available on: https://undocs.org/pdf?symbol=en/S/2017/685 (last visit 06/07/2020).

5 Daugirdas, Kristina. ″Reputation and the responsibility of international organizations.” *European Journal of International Law* 25, no. 4 (2014):991-1018, at 1007

6 Tzanakopoulos, Antonios. "Sanctions Imposed Unilaterally by the European Union: Implications for the European Union’s International Responsibility." In *Economic sanctions under international law*, pp. 145-161. TMC Asser Press, The Hague, (2015):147.

7 On the normative distinction P. Orakhelashvili wrote: “*legally speaking, the competence to adopt particular measures is reserved for a particular organ or entity premised on the particular multilateral mode of decision-making, then the adoption of generically similar measures outside that reserved framework should be classified as unilateral*

measures". Orakhelashvili, Alexander. "The impact of unilateral EU economic sanctions on the UN collective security framework: The cases of Iran and Syria." In *Economic sanctions under international Law*, pp. 3-21. TMC Asser Press, The Hague, (2015) at 4.

8 This definition is enshrined in the UN Charter despite the fact that the term *sanctions* does not figure anywhere in the Charter. In fact, Article 41 (Chapter VII of the UN Charter) talks about "*measures not involving the use of armed force*".

9 Article 48 entitled "*[i]nvocation of responsibility by a State other than an injured State*" provides the following: (1) Any State other than an injured State is entitled to invoke the responsibility of another State if: (b) the obligation breached is owed to the international community as a whole. Carisch, Enrico, Loraine Rickard-Martin, and Shawna R. Meister. *Evolution of UN Sanctions*. Springer, 2017.

10 Pellet, Alain. "Unilateral Sanctions and International Law". *Yearbook of Institute of International Law* - Tallinn Session - Volume 76 éditions A.Pedone EAN 978-2-233-00805-3. (723-736) at 725-726. On the definition of multilateral sanctions, see also: Pellet, Alain, and Alina Miron. "Sanctions." In *Max Planck Encyclopedia of Public International Law*. Oxford University Press, 2012.

11 Klabbers, Jan. "Kristina Daugirdas, 'Reputation and the Responsibility of International Organizations". *Ejil:Talk!*. March 25, 2015. Available on: https://www.ejiltalk.org/kristina-daugirdas-reputation-and-the-responsibility-of-international-organizations/ Last visit 06/07/2020).

12 The issue of international obligations of International organizations and the extent to which international law binds IOs was eloquently analyzed by P. Kristina Daugirdas. See: Daugirdas, Kristina. "How and Why International Law Binds International Organizations." *Harv. Int'l LJ* 57 (2016): 325.

13 Independent International Commission on Kosovo. *The Kosovo Report: Conflict, International Response, Lessons Learned*. Oxford University Press, USA, (2000): 4 and 186. Available on: https://reliefweb.int/sites/reliefweb.int/files/resources/6D26FF88119644CFC1256989005CD392-thekosovoreport.pdf (last visit 24/08/2020)

14 Daugirdas, Kristina. "Reputation and the responsibility of international organizations." *European Journal of International Law* 25, no. 4 (2014): 991-1018, at 1007. See also Grant, Ruth W., and Robert O. Keohane. "Accountability and abuses of power in world politics." *American political science review* (2005): 29-43, at 35; and Buchanan, Allen, and Robert O. Keohane. "The legitimacy of global governance institutions." *Ethics & international affairs* 20, no. 4 (2006): 405-437., at 405.

15 Pellet, "Unilateral Sanctions and International Law", 729.

16 P. Pellet distinguished between two senses of legitimacy: *descriptive and normative*. The former has roots in the *belief theory* of Max Weber (i.e. it refers to the approval or the adherence of the subjects to a given norm). While the latter-which is dominant in the legal debate today- requires the fulfilment of some conditions, and imply a testing of *"whether the subject's belief is correct*'". Pellet, "Unilateral Sanctions and International Law", 729.

17 Barlow, Elisabeth. *International Legitimacy Interview series- Prof Ian Hurd*. The University of Edinburgh. August 16th, 2019.

Available on: https://media.ed.ac.uk/media/International+Legitimacy+Interviews+-+Prof+Ian+Hurd/1_l51gmhm6 (last visit 19/08/2020).

18 For instance in their study of the legitimacy of international economic institutions, Kentikelenis and Voeten (2020) as well as Tallberg and Zürn 2019 define legitimacy as "*the belief that authority is appropriately exercised within established institutional arrangements".* Kentikelenis, Alexander, and Erik Voeten. "Exit, voice, and loyalty towards liberal international institutions: Evidence from United Nations speeches 1970–2017." In *International Political Economy Society conference*, Massachusetts Institute of Technology, Cambridge, MA, vol. 2, no. 3. 2018.

19 In his Course at The Hague Academy (1993), P. Thomas Franck distinguished legitimacy from fairness and argued that fairness is a *composite of two independent variables: legitimacy and distributive justice.* In this sense, he defined legitimacy as t*he attribute of a rule which conduces to the belief that it is fair because it was made and is applied in accordance with 'right process*'. He identified three elements to measure whether a rule is perceived as legitimate

or not. First element is the intrinsic properties of that rule. The second element is the process by which it was made. Finally, the third element is the process of its interpretation by judges and officials. Franck, Thomas M. *Fairness in international law and institutions*. Vol. 51. Oxford: Clarendon Press, (1995):26

20 Pellet, Alain. "Legitimacy of legislative and executive actions of international institutions." In *Legitimacy in International Law*, pp. 63-82. Springer, Berlin, Heidelberg, (2008).

21 *Buchanan, and Keohane,* "The legitimacy of global governance institutions". 412.

22 *Buchanan, and Keohane,* "The legitimacy of global governance institutions". 412.

23 Yasuyuki Matsunaga (faculty member. Peace and Conflict Studies, Graduate School of Global Studies, Tokyo University of Foreign Studies), in discussion with the author, Tokyo, June 2020.

24 One justification of such choice lies in the fact that justice and fairness are complex intractable and controversial concepts. For example, in his article entitled '*The problem of global justice*', the American philosopher Thomas Nagel wrote "we don't live in a just world. This may be the least controversial claim one could make in political theory'. He explained the unclearness of the concept of the meaning of concept by the paradoxical character of the debate about justice at the international scale: "*it is much less clear what, if anything, justice on a world scale might mean or what the hope for justice should lead us to want in the domain of international or global institutions, and in the policies of states that are in a position to affect the world order*". In short, there is a consensus, at least among most of scholars, that the international society is an unjust environment, adversely, there is a large disagreement of what sense could the word justice imply within the international arena. Nagel, Thomas. "The problem of global justice." *Philosophy & public affairs* 33, no. 2 (2005): 113-147 at 113. Hurd, Ian. *After anarchy: legitimacy and power in the United Nations Security Council.* Princeton University Press, (2008): 32.

25 For Habermas legitimacy refers to the recognition that a political order is just and right: "*legitimacy means that there are good arguments for a political order's claim to be recognized as right and just; a legitimate order deserves recognition. Legitimacy means a political order's worthiness to be recognized"*. He also stressed Weber's conceptualization of legitimacy as a "*validity claim*" yet he asserted that such a claim is "*contestable"*. This contestable character refers to the dynamic aspect of legitimacy. Hence, processes of legitimation serves to show how and why the political order is worthy of recognition. Habermas, Jürgen. *Communication and the Evolution of Society*. Trans. Thomas McCarthy. Boston: Beacon (1979). Chapter 5, at 178 and 183.

26 P. Hurd defined Legitimacy as follows: "*an actor's normative belief that a rule or institution ought to be obeyed.13 It is a subjective quality, relational between actor and institution, and is defined by the actor's perception of the institution*". Hurd, Ian. *After anarchy: legitimacy and power in the United Nations Security Council.* Princeton University Press, (2008):7.

27 Suchman, Mark C. "Managing legitimacy: Strategic and institutional approaches." *Academy of management review* 20, no. 3 (1995): 571-610, at 574.

28 Hurd, *After Anarchy*, 30.

29 Hurd, *After Anarchy,* 33-34.

30 Hurd, *After Anarchy,* 33-34.

31 Hurd, *After Anarchy,* 33-34.

32 Cockayne, Rebecca Brubaker, and Jayakody, *Fairly Clear Risks*, Executive Summary.

33 Suchman, "Managing legitimacy ", 577-584

34 Klabbers, "Kristina Daugirdas, 'Reputation and the Responsibility of International Organizations' ".

35 On the understanding of output legitimacy as equivalent of effectiveness, see generally: Schmidt, Vivien A. "*Democracy and legitimacy in the European Union revisited: Input, output and 'throughput'.*" Political Studies 61, no. 1 (2013): 2-22, at.1. The author discusses the way Scholars of the European Union (which is also an international organization like the UN, yet the difference lies in the fact that the first is regional while the second is universal) have analyzed the EU's legitimacy. She used the term output legitimacy as equivalent to effectiveness.

36 Challenging the legitimacy of the international institutions is actually a common phenomenon in international

relations and has frequently led to fundamental institutional reforms. Voeten and Kentikelenis (2020), for instance, asserts that challenging the legitimacy of international economic institutions is a common phenomenon "*even though the driving forces behind them may change". See generally:* Kentikelenis, Alexander, and Erik Voeten, "Exit, voice, and loyalty towards liberal international institutions*".*

37 O'Connell, Mary Ellen. "Debating the law of sanctions." *European Journal of International Law* 13, no. 1 (2002): 63-79, at 64- 67.

38 O'Connell, "Debating the law of sanctions", 64- 67.

39 O'Connell, "Debating the law of sanctions", 70. Also, Biersteker, Eckert, and Tourinho (2016) affirm that "*The use of targeted sanctions as a central instrument to address challenges to international peace and security has been a defining feature of UN Security Council practice since the end of the Cold War*". Biersteker, Eckert, and Tourinho, *Targeted Sanctions.* 1

40 Tzanakopoulos, Antonios. "The Solange Argument as a Justification for Disobeying the Security Council in the Kadi Judgments (November 7, 2013). KADI ON TRIAL: A MULTIFACETED ANALYSIS OF THE KADI JUDGMENT", pp. 121-134, Matej Avbelj, Filippo Fontanelli and Giuseppe Martinico, eds, Routledge, 2014, *Oxford Legal Studies Research Paper* No. 6/2014. (2016):121. Available at SSRN: https://ssrn.com/abstract=2364764.

41 See for instance: Tzanakopoulos, Antonios. "Domestic Courts in International Law: the international judicial function of national courts." *Loy. LA Int'l & Comp. L. Rev* 34 (2011): 133.

42 A direct effect of this decision is annulling the regulation aimed at giving effect to the SC decision, i.e. implementing it in member states legal orders.

43 Cockayne, Rebecca Brubaker, and Jayakody, *Fairly Clear Risks*, 1.

44 Barlow, Elisabeth. *International Legitimacy Interview series- Prof Ian Hurd*. The University of Edinburg. August 16th, 2019.
Available on: https://media.ed.ac.uk/media/International+Legitimacy+Interviews+-+Prof+Ian+Hurd/1_l51gmhm6 (last visit 19/08/2020).

45 Tzanakopoulos, Antonios. "Introduction to the Paperback Edition*". Disobeying the Security Council: countermeasures against wrongful sanctions. OUP Oxford, 2013.* (*2013):*xxxiv

46 Daugirdas, "Reputation and the Responsibility of International Organizations", 993.

47 Buchanan, Allen, and Robert O. Keohane. "The legitimacy of global governance institutions." *Ethics & international affairs* 20, no. 4 (2006): 405-437, at 407.

48 See for example: Thouvenin, Jean-Marc. "Le jour le plus triste pour les Nations Unies, les frappes anglo-américaines de Décembre sur l'Iraq." *Annuaire francais de droit international* 44, no. 1 (1998): 209-231.

49 The UK Ambassador to the UN withdrawal the revised draft resolution jointly proposed by the UK, US and Spain after strong opposition from member states: see: http://archive.boston.com/news/packages/iraq/misc/un_resolution2.htm. Also, see generally: Murphy, Sean D. "A*ssessing the legality of invading Iraq.*" *Geo. lJ* 92 (2003): 173.

50 See for instance: Scott, Shirley V., and Olivia Ambler. "Does legality really matter? Accounting for the decline in US foreign policy legitimacy following the 2003 invasion of Iraq." *European Journal of International Relations* 13, no. 1 (2007): 67-87.

51 P. Andrew Hurrell, for instance, says that *the* process of *internalization* refers to the adoption and incorporation of external ideas, norms, and practices. One of the major impacts of the process of internalization lies within its ability to change the way the actors perceive their interests, and lead them to reevaluate their political options. Hurrell, Andrew. ″Power, institutions, and the production of inequality." Power in global governance 56 (2005):53

52 Hurd, *After Anarchy,* 31.

53 Hurd, *After Anarchy*, *15.*

54 Collective legitimation refers to the idea that the UNSC "has come to be regarded, and used, as a dispenser of politically significant approval and disapproval of the claims, policies, and actions of states, including, but going far beyond, their claims to status as independent members of the international system". Claude, Inis L. "Collective

legitimization as a political function of the United Nations." *In States and the Global System*, pp. 145-159. Palgrave Macmillan, London, (1988):1

55 Hurd, *After Anarchy*, 6.

56 Hurd (2008) definition of legitimacy: *an actor's normative belief that a rule or institution ought to be obeyed. It is a subjective quality, relational between actors and institution, and is defined by the actor's perception of the institution*." Hurd, *After Anarchy*, 7.

57 Hurd, *After Anarchy*, 7. *See also:* Merquior, José Guilherme. "Rousseau and Weber: Two studies in the theory of legitimacy." (1980):4

58 Charron, Andrea, and Clara Portela. "*The relationship between United Nations sanctions and regional sanctions regimes.*" (2016): 101- 118, at 102.

59 On the question of controlling the power of the SC, see for instance: Nasu, Hitoshi. "Who Guards the Guardian?: Towards Regulation of the UN Security Council's Chapter VII Powers Through Dialogue." (2009): 10-52.

60 See: Tzanakopoulos, Antonios. "L'Invocation de la Théorie des Contre-Mesures en Tant Que Justification de la Désobéissance au Conseil de Sécurité." *Rev. BDI* 46 (2013): 78.

61 Organization of African Unity, Doc. AHG/Dcl. 127 (XXXIV), 10 June 1998. Daugirdas, "Reputation and the responsibility of international organizations*", 1014*.

62 Daugirdas, "Reputation and the responsibility of international organizations", 1014. See also Hurd, Ian. "The Strategic Use of Liberal Internationalism." 59 *Int'l Org* (2005) 495, at 518.

63 Tzanakopoulos, Antonios. "Sharing responsibility for UN targeted sanctions." In *International Organizations and Member State Responsibility*, *at*.139-140.

64 Cockayne, Brubaker, and Jayakody, *Fairly Clear Risks*, *vii.*

65 Thouvenin, Jean-Marc. "International Economic Sanctions and Fundamental Rights: Friend or Foe*?*" In *the Influence of Human Rights on International Law*. Springer, Cham, (2015): 113-129, at 125-128

66 Hurd, *After Anarchy*, *30.*

67 Hurd, *After Anarchy*, 31.

68 Merquior, *Rousseau and Weber,* 93.

69 Cohen, Jere, Lawrence E. Hazelrigg, and Whitney Pope. "De-Parsonizing Weber: A critique of Parsons' interpretation of Weber's sociology*." American sociological review* (1975): 229-241. For P. Parson's response see: Parsons, Talcott. "Reply to Cohen, Hazelrigg and Pope." *American Sociological Review* 41, no. 2 (1976): 361-365.

70 Merquior, *Rousseau and Weber*, 93-95.

71 Wendt, Alexander. *Social theory of international politics*. Vol. 67. Cambridge University Press, (1999):239

72 Hurd, *After Anarchy*, 39.

73 Wendt, *Social theory of international politics*, 239.

74 Hurd, *After Anarchy*, 38 and 40.

75 Wendt, Alexander. *Social theory of international politics*, 239.

76 Biersteker, Tourinho and Eckert, "Thinking about United Nations targeted sanction"*,* 12.

77 Charron, and Portela, "The relationship between United Nations sanctions and regional sanctions regimes", 101.

78 Portela, Clara. "Where and why does the EU impose sanctions?" *Politique Européenne* 3 (2005): 83-111.

79 Hurd, *After Anarchy*, 38.

80 Charron, and Portela, "The relationship between United Nations sanctions and regional sanctions regimes", 114-115.

81 Charron, and Portela, "The relationship between United Nations sanctions and regional sanctions regimes", 110.

82 Charron, and Portela, "The relationship between United Nations sanctions and regional sanctions regimes", 115.

83 Charron, and Portela, "The relationship between United Nations sanctions and regional sanctions regimes", 102-103. See also Du Rocher, Sophie Boisseau. "The European Union, Burma/Myanmar and ASEAN: A challenge to European norms and values or a new opportunity." *Asia Europe Journal* 10, no. 2-3 (2012): 165-180, at 102 and 118.

84 See for instance, Petersson, Magnus. "Myanmar in EU–ASEAN relations." *Asia Europe Journal* 4, no. 4 (2006):

563-581.

85 Cleveland, Sarah H. "Norm internalization and US economic sanctions." *Yale J. int'l L.* 26 (2001): 1. 10, 14 and 15.

86 Sadurska, Romana, and Christine M. Chinkin. "The collapse of the international Tin Council: a case of state responsibility." *Va. J. Int'l L.* 30 (1989): 845, at 888

87 Daugirdas, "Reputation and the responsibility of international organizations", 1010.

88 Guzman, Andrew T. *How international law works: a rational choice theory*. Oxford University Press, (2008): 75–76.

89 See also, Guzman, *How international law works*, 75–76.

90 Hurd, *After Anarchy*, 32-35.

91 Hurd account is a combination between constructivism and rational-choice theories. The latter is particularly sound among liberal institutionalists who explain the phenomenon of the expansion of international institutions as a direct outcome of globalization, the rapid expansion of technologies and means of communication and the inevitable interdependence among states. See for example: Hurrell, "Power, institutions, and the production of inequality", 34.

92 Koremenos, Barbara, Charles Lipson, and Duncan Snidal. "*The rational design of international institutions*." *International organization* 55, no. 4 (2001): 761-799, at 768

93 Hurrell, "Power, institutions, and the production of inequality", 37.

94 Hurrell, "Power, institutions, and the production of inequality", 47.

95 Biersteker, Thomas. "UN targeted sanctions as signals: naming and shaming or naming and stigmatizing?" In *The politics of leverage in international relations*, pp. 165-184. Palgrave Macmillan, London, (2015):173.

96 Lopez, George A., and David Cortright. "Financial Sanctions: The Key to a 'Smart 'Sanctions Strategy." *Die Friedens-Warte* (1997): 327-336, at 327-328.

97 Galtung, Johan. "*On the effects of international economic sanctions: With examples from the case of Rhodesia.*" *World Politics: A Quarterly Journal of International Relations* (1967): 378-416, at 380.

98 Thouvenin, Jean-Marc. "International Economic Sanctions and Fundamental Rights: Friend or Foe?" In *the Influence of Human Rights on International Law*, pp. 113-129. Springer, Cham, (2015):125- 128.

99 Thouvenin, "International Economic Sanctions and Fundamental Rights: Friend or Foe? ". 128-129.

100 Hurd, *After Anarchy*, *32*.

101 Hurrell, "Power, institutions, and the production of inequality", 37.

102 OFAC: The Office of Foreign Assets Control is a financial intelligence and enforcement agency of the U.S. Treasury Department, officially established by President Truman in 1950 following the Korean War. It administers and enforces economic and trade sanctions in support of U.S. (last update 7/02/2020).The OFAC is the institutional body charged with administering and enforcing US economic and trade sanctions)

103 Hurrell, "Power, institutions, and the production of inequality", 38. See also: Krisch, Nico. "More equal than the rest? Hierarchy, equality and US predominance in international law." (2003): 135-175.

104 Preeg, Ernest H. *Feeling good or doing good with sanctions: Unilateral economic sanctions and the US National interest*. Vol. 21. Center for Strategic & International studies, 1999.

105 Clyde, Hufbauer Gary, Jeffrey J. Schott, Kimberly Ann Elliott, and Barbara Oegg. *Economic Sanctions Reconsidered. Peterson Institute for international economics* (2007): 233, at 136 and 135

106 Vaïsse (2012) argued that Obama portrayed himself as defender and believer in international norms, of engagement and dialogue with other nations, but by the end of his first mandate his pragmatism and his embracement of "*hard power*" prevailed. See Conclusion: "*Obama le pragmatique et les sources du renouveau américain*". Vaïsse, Justin. *Barack Obama et sa politique étrangère (2008-2012)*. Odile Jacob, 2012 at 227 and 228.

107 The first challenge against UN listing decisions took place in 2002. From 2002 to 2007 (before the Kadi Judgment) 6 legal challenges were brought against UN sanctions, that is 6 challenges in 6 years. However, in the next 6 years (2008-2013) there were 26 challenges. Between 2008 and 2018 there were 40 legal challenges including 4 ongoing challenges. Cockayne, Brubaker, and Jayakody, *Fairly Clear Risks*, 8. , see also p. 5-Figure 2: FAIR PROCESS CHALLNGES TO UN SANCTIONS BY JURISDICTION AND YEAR.

108 The year 2001 is a turning point here. Indeed, following the attacks of 9/11, the US and its allies coined the concept "war against terrorism", and there were serious challenges to the UN peace and security framework. Challengers argue that the UN frameworks are not sufficient to new forms of threats to international peace and security and shall be reformed. Two years later, a coalition of states invaded Iraq without having the authorization of the SC in a blunt violation of Chapter VII. Such debate led some scholars to declare the death of the general prohibition of the use of force enshrined in Article 2(4). See: Brunnée, Jutta, and Stephen J. Toope. *Legitimacy and legality in international law: an interactional account*. Vol. 67. Cambridge University Press, 2010 at 342; Franck, Thomas M., "What Happens Now? The United Nations After Iraq" (2003)97 *American Journal of International Law* 607.note 33 at 607; and OFAC, Official Website. Available on: https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/OFAC-Recent-Actions.aspx (last update: 7/8/2020, last visit 09/07/2020).

109 Bapat, Navin A., and T. Clifton Morgan. "Multilateral versus unilateral sanctions reconsidered: A test using new data." *International Studies Quarterly* 53, no. 4 (2009): 1075-1094, at 1075 and 1076

110 *On The Issues.* "Dick Cheney on Foreign Policy Vice President of the United States under George W. Bush. Edwards-Cheney debate: 2004 Vice Presidential." *Oct 5, 2004. Available on: http://www.issues2000.org/Celeb/Dick_Cheney_Foreign_Policy.htm (last visit* 03/07/2020)

111 Rhodan, Maya. "Here Are All the Times Donald Trump Bashed the United Nations Before Speaking There ". *Time Magazine*. SEPTEMBER 18, 2017 1:07 PM EDT). Available on: https://time.com/4946276/donald-trump-united-nations-general-assembly/ (last visit: 03/07/2020)

112 United States Mission to the United Nation. U.S. *Intervention on the Commemoration of the 75th Anniversary of the UN Charter, New York, New York, June 26, 2020*. Available on: https://usun.usmission.gov/u-s-intervention-on-the-commemoration-of-the-75th-anniversary-of-the-un-charter/ (last visit 20/08/2020).

113 Concerning the vote to extend the arms embargo on Iran. In fact, by the 18th of October 2020, a 13-year ban on Iran will expire in accordance with the provisions of the JCPOA (2015 nuclear deal). The lifting of the embargo as well as other sanctions relief came as a compromise to induce Iran's acceptance to limit its unlawful nuclear activities.

114 In 2018, a draft Resolution of the US ambassador to the UN (at the time Nikki Haley) failed to obtain any vote from the SC members (1 Yes-the US own vote, 3 No and 11 abstentions). The draft resolution was not adopted having failed to obtain the required number of votes (S/PV.8274). United Nations. United States of America: draft resolution [on the situation in the Gaza Strip]. S/2018/520 (1 June 2018). available on: https://www.un.org/unispal/document/draft-security-council-resolution-on-gaza-violence-s2018520/ (last visit 20/08/2020).

115 See for instance, Dreher, Axel, Valentin Lang, B. Peter Rosendorff, and James Raymond Vreeland. "Buying votes and international organizations: The dirty work-hypothesis." *CEPR Discussion Paper No. DP13290*, 2018. The authors argued that different US administrations used both bilateral aid and IMF loans to facilitate their foreign-policy interventions and literally to buy other countries' votes in the UNSC.

116 This stance was clearly reaffirmed in the *Republican National Convention 2020* that took place in Washington on 25/08/2020. (The National Convention is a presidential nominating convention in which delegates of the US Republican Party select their nominees for president and vice president in the US presidential election). For instance, in her speech, the former Ambassador Nikki Haley described the United Nations as a den of "*dictators, murderers, and thieves*" who wants the US to "*pay their bills*". She said literally "*Now, the U.N. is not for the faint of heart. It's a place where dictators-murderers-&-thieves denounce America... and then put their hands out and demand that we pay their bills".* For full speech see: *CNN Politics*."Transcript: Nikki Haley's RNC speech. August 25, 2020." Available on: https://edition.cnn.com/2020/08/24/politics/nikki-haley-speech-transcript/index.html (last visit 26/08/2020).

117 This was the case of the US-UK Draft resolution seeking an authorization from the council to invade Iraq, which was abandoned and never brought to vote when it was clearly realized that other member states of the SC will not approve it.

118 See: Scherz, Antoinette, and Alain Zysset. "The UN Security Council, normative legitimacy and the challenge of

specificity." *Critical Review of International Social and Political Philosophy* (2019); and Allen, Susan Hannah, and Amy T. Yuen. "Action or inaction: United Nations Security Council activity, 1994–2013." *Journal of Peace Research* (2020): 0022343319900222.

119 Voeten, Erik. "The political origins of the UN Security Council's ability to legitimize the use of force." *International Organization* 59, no. 3 (2005): 527-557.

120 See: Manson, Katrina. "US appeals for European support to extend Iran arms embargo" . *Financial Times*. Washington AUGUST 14 2020. Available on: https://www.ft.com/content/b87fe52b-8e46-437b-a158-357ffa85b7a2 (last visit 20/08/2020); and *Al Jazeera and News Agencies.* "UN Security Council rejects US bid to extend Iran arms embargo". 15 August 2020. Available on: https://www.aljazeera.com/news/2020/08/fail-loses-bid-extend-arms-embargo-iran-200815010505938.html (last visit: 20/08/2020). The US mission to the UN claimed their right to activate the JCPOA's snapback mechanism though the US had already withdrawn unilaterally from the deal. In mid-August 2020, US officials in the Council circulated memo to representatives of other member states in which they claim that the US is still a participant in the deal and has the right to activate the mechanism. As a response on August 20th, France, UK and Germany (E3) circulated a letter to the UNSC presidency and issued a statement rejecting the US Snapback move and declaring Washington out of the deal since May 8, 2018 (President Trump memorandum). The E3 stated that they "cannot therefore support this action which is incompatible with our current efforts to support the JCPOA". See: Government of the United Kingdom. *E3 Foreign Ministers' Statement on the JCPOA: Statement by the United Kingdom, France and Germany on the JCPOA*. 20 August 2020. available on: https://www.gov.uk/government/speeches/e3-foreign-ministers-statement-on-the-jcpoa (last visit 21/08/2020)

121 P. Poast used Twitter platform to "*create a "Syllabus" for [his] Introduction to International Relations course"*, his analysis of the US administration's behavior in the UN and its relation to legitimacy of the SC can be found on his twitter account's "*ChicagoIntroIR Threads*" (@ProfPaulPoast). Poast, Paul. ChicagoIntroIR Threads. August 16, 2020 http://www.paulpoast.com/chicagointroir/4594675940 (last visit 20/08/2020)

122 Charron, and Portela, "The relationship between United Nations sanctions and regional sanctions regimes", 101.

123 Hurrell, "Power, institutions, and the production of inequality", *57*.

124 For Brunnée and Toope, the *well-established prohibition of the use of force* and its exceptions constitutes the "*foundation of the contemporary international legal orde*r". It is necessary to note here that the authors talked about a third exception: the responsibility to protect (R2P) which is commonly regarded as an emerging doctrine (formally recognized in 2005), and which relies primarily on political commitment of states. As for today, there is only one case in history where the UN imposed sanctions on the basis of the R2P (sanctions against Libya 2011, UN Res 1970). Brunnée, and Toope*, Legitimacy and legality in international law*, 18.

125 This idea of centralization of the use of force in issues related to international peace and security is well established and broadly accepted in legal scholarship. The explanation provided by Austrian American jurist Josef Kunz is illustrative with this respect: "*The U.N. Charter, in a radical and progressive development, replaces the legally ambiguous term "war" by the wider and clear term of "use of force." Collective sanctions are provided-preventive and repressive sanctions, and in both cases sanctions not involving the use of military force and military sanctions-against "any threat to the peace, breach of the peace or act of aggression." It is also a progressive development that the determination of the delict and of the guilty state, the decision on non- military and military sanctions, and the execution of the sanctions were radically centralized in the Security Council. For the first time an organ of an international organization, the Security Council, was created with real power; it alone has the sanctioning competence; its decisions are legally binding on all the Members of the United Nation*". Kunz, Josef L. "Sanctions in international law." *The American journal of international law* 54, no. 2 (1960): 324-347. See also, Tzanakopoulos, Antonios. *The United Nations Security Council Sanctions*. Faculty of Law, University of Oxford. Audiovisual Library of International Law (AVL). 30 Oct 2014. (see from minute 4:17 to minute 6:10) Available at: http://webtv.un.org/news-features/audiovisual-library-of-international-law-avl/watch/antonios-tzanakopoulos-on-the-united-nations-security-council-sanctions/3891633716001/?term=&sort=popular&page=4(last visit 27/08/2020)

126 Orakhelashvili, "The impact of unilateral EU economic sanctions on the UN collective security framework", 20.

127 Those sanctions imposed by European states non-members of the European Unions are imposed in alignment with the EU Council Decision (CFSP) 2020/719 of 28 May 2020, and the EU Council Decision (CFSP) 2020/607. For updates see: Maya Lester QC & Michael O'Kane. European Sanctions. Available on: https://www.europeansanctions.com/.

128 McAdam, Doug, Sidney Tarrow, and Charles Tilly. *Dynamics of contention*. Cambridge University Press (2001):316.

129 MacAdam Tilly and Tarrow, *Dynamics of contention*, 332.

130 MacAdam Tilly and Tarrow, *Dynamics of contention*, 316.

131 MacAdam Tilly and Tarrow, *Dynamics of contention*, 145.

132 Ringmar, Erik. *Identity, interest and action: a cultural explanation of Sweden's intervention in the Thirty Years War*. Cambridge University Press, (2007): 13-14.

133 The term is commonly used to denote the Treaty of Peace concluded between France and the Roman Empire and the Treaty of Peace between the Roman Empire and Sweden. The conclusion of such treaties ended the war between European rivals, paved the way for the emergence of sovereign states and is considered as the origin of many fundamental principles of contemporary IR.

134 MacAdam Tilly and Tarrow, *Dynamics of contention*, 146.

135 MacAdam Tilly and Tarrow, *Dynamics of contention*, 146.

136 See for instance: Hurd, Ian. "Legitimacy and authority in international politics." *International organization* (1999): 379-408; and Brunnée, and Toope, *Legitimacy and legality in international law*, 3.

137 Hurd (2008) argued that the recognition of the SC's legitimacy is the outcome of a continuous "*historical process".* Such a process was triggered even before the World War, and is still ongoing. Hurd, *After Anarchy*, 15.

138 Legal debates in the 60s were mostly focused on whether international law is a law or not, that is, is it respected and does it succeed in acquiring the deference and securing the compliance of those whom it is addressed or not. This question was mainly rooted in a comparison with national law and is essentially justified by the lack of means of enforcement and the continuous violation of international law. The debate was apparently closed with the affirmation that such question is a "futile", "chestnut" and even senseless; that international law is a law, and the right question to be asked is "how well does international law do in its effort to influence state behavior". See for instance: Andrew T. Guzman. "Rethinking International Law as Law." Proceedings of the Annual Meeting (American Society of International Law) 103 (2009): 155-57; and Alvarez, José E. "But Is It Law?" *Proceedings of the Annual Meeting* (American Society of International Law) 103 (2009): 163-65.

139 Henkin, Louis. *How nations behave: law and foreign policy*. Columbia University Press (1979): 47.

140 Hurd, *After Anarchy*, 34.

141 Hurd, *After Anarchy*, 35.

142 Hurd, *After Anarchy*, 35.

143 Hurd, *After Anarchy*, 37.

144 *Hurd, After Anarchy*, 38.

145 *Hurd, After Anarchy*, 40.

146 *Hurd, After Anarchy*, 40.

147 This idea is better explained by American sociologist Desmond Ellis. See generally, Ellis, Desmond P. "The Hobbesian problem of order: A critical appraisal of the normative solution." *American Sociological Review* (1971): 692-703.

148 In the first case, coercion leave the coerced in a less advantaged situation (mainly obtained through physical violence), while in an order that is based on self-interest, the actor who comply will be in a better situation (mainly obtained through diverse means *social psychic and physical incentives and disincentives*). Hurd, *After Anarchy*, 38.

149 Tilly, Charles. *Coercion, capital, and European states, AD 990-1992*. Oxford: Blackwell, 1992. See for instance p.5 where Tilly argued that a combination of coercion and capital was behind the "qualification" of many entities as

states and later as national states across the European history.

150 Hurd, *After Anarchy*, 35.

151 Hurd, *After Anarchy*, 3.

152 Milner, Helen. "The assumption of anarchy in international relations theory: a critique." *Review of International Studies* 17, no. 1 (1991): 67-85.

153 Hurd, *After Anarchy*, 30.

154 According to Weber's conceptualization of legitimacy, authority is created when power and legitimacy are coupled. Hurd, *After Anarchy*, 60.

155 See generally,Tzanakopoulos, Antonios. *Disobeying the Security Council: countermeasures against wrongful sanctions*. OUP Oxford, 2013.

156 Marossi, and Bassett, *Economic Sanctions under International Law*, 65-237.

157 Cockayne, Brubaker, and Jayakody, *Fairly Clear Risks*, 7.

158 Cockayne, James, Rebecca Brubaker, and Nadeshda Jayakody. "Fairly Clear Risks ", 7. See also, Higgins, Rosalyn. "The place of international law in the settlement of disputes by the Security Council." Am. J. Int'l L. 64 (1970): 1; and Koskenniemi, Martti. "The place of law in collective security." Mich. J. Int'l L. 17 (1995): 455; and

159 For P. Franck, the norms generated by the Council reflects the developments if norms and standards of the international society. It mirrors the evolution of the international legal order. Franck, Thomas M., and Thomas M. Franck. *Fairness in international law and institutions*. Vol. 51. Oxford: Clarendon Press, 1995. at 26.

References

Al Jazeera and News Agencies. "UN Security Council rejects US bid to extend Iran arms embargo". 15 August 2020. Available on: https://www.aljazeera.com/news/2020/08/fail-loses-bid-extend-arms-embargo-iran-200815010505938.html (last visit: 20/08/2020)

Allen, Susan Hannah, and Amy T. Yuen. "Action or inaction: United Nations Security Council activity, 1994–2013." *Journal of Peace Research* (2020): 0022343319900222.

Alvarez, José E. "But Is It Law?" *Proceedings of the Annual Meeting* (American Society of International Law) 103 (2009): 163-65

Bapat, Navin A., and T. Clifton Morgan. "Multilateral versus unilateral sanctions reconsidered: A test using new data." *International Studies Quarterly* 53, no. 4 (2009): 1075-1094.

Barlow, Elisabeth. International Legitimacy Interview series- Prof Ian Hurd. The University of Edinburgh. August 16th, 2019. Available on: https://media.ed.ac.uk/media/International+Legitimacy+Interviews+-+Prof+Ian+Hurd/1_l51gmhm6 (last visit 19/08/2020).

Biersteker, Thomas J., Marcos Tourinho, and Sue E. Eckert. "Thinking about United Nations targeted sanctions". In *Targeted sanctions: the impacts and effectiveness of United Nations action*. - Cambridge: Cambridge University Press, 2016. - P. 11-37

Biersteker, Thomas J., Sue E. Eckert, and Marcos Tourinho, eds. *Targeted sanctions*. Cambridge University Press, 2016.

Biersteker, Thomas. "UN targeted sanctions as signals: naming and shaming or naming and stigmatizing?." In *The politics of leverage in international relations*, pp. 165-184. Palgrave Macmillan, London, 2015.

Brunnée, Jutta, and Stephen J. Toope. *Legitimacy and legality in international law: an interactional account*. Vol. 67. Cambridge University Press, 2010.

Buchanan, Allen, and Robert O. Keohane. "The legitimacy of global governance institutions." *Ethics & international affairs* 20, no. 4 (2006): 405-437.

Buchanan, Allen. "Political legitimacy and democracy." *Ethics* 112, no. 4 (2002): 689-719.

Carisch, Enrico, Loraine Rickard-Martin, and Shawna R. Meister. Evolution of UN Sanctions. Springer, 2017.

Charron, Andrea, and Clara Portela. "The relationship between United Nations sanctions and regional sanctions regimes." (2016): 101- 118.

Claude, Inis L. "Collective legitimization as a political function of the United Nations." *In States and the Global System*, pp. 145-159. Palgrave Macmillan, London, 1988.

Cleveland, Sarah H. "Norm internalization and US economic sanctions." *Yale J. int'l L.* 26 (2001): 1.

Clyde, Hufbauer Gary, Jeffrey J. Schott, Kimberly Ann Elliott, and Barbara Oegg. *Economic Sanctions Reconsidered.* Peterson Institute for international economics (2007): 233.

Cockayne, James, Rebecca Brubaker, and Nadeshda Jayakody. *Fairly Clear Risks: Protecting UN sanctions' legitimacy and effectiveness through fair and clear procedures*. United Nations University, 2018.

Cohen, Jere, Lawrence E. Hazelrigg, and Whitney Pope. "De-Parsonizing Weber: A critique of Parsons' interpretation of Weber's sociology." *American sociological review* (1975): 229-241.

Cortright, David, George A. Lopez, Richard W. Conroy, Jaleh Dashti-Gibson, Julia Wagler, David M. Malone, and Lloyd Axworthy. *The sanctions decade: Assessing UN strategies in the 1990s*. Vol. 1. Boulder, CO: Lynne Rienner Publishers, 2000;

Cortright, David, George A. Lopez, Richard W. Conroy, Jaleh Dashti-Gibson, Julia Wagler, David M. Malone, and Lloyd Axworthy. *The sanctions decade: Assessing UN strategies in the 1990s*. Vol. 1. Boulder, CO: Lynne Rienner Publishers, 2000.

Cortright, David, and George A. Lopez. "Learning from the sanctions decade." *Global Dialogue* 2, no. 3 (2000)

Daugirdas, Kristina. "Reputation and the responsibility of international organizations." *European Journal of International Law* 25, no. 4 (2014): 991-1018.

On The Issues. "Dick Cheney on Foreign Policy Vice President of the United States under George W. Bush. Edwards-Cheney debate: 2004 Vice Presidential". Oct 5, 2004. Available on: http://www.issues2000.org/Celeb/Dick_Cheney_Foreign_Policy.htm (last visit 03/07/2020)

Doxey, Margaret. "*Reflections on the sanctions decade and beyond.*" *International Journal* 64, no. 2 (2009): 539-549

Hufbauer, Gary Clyde, and Barbara Oegg. The impact of economic sanctions on US trade: Andrew Rose's gravity model. No. PB03-04. 2003.

Doxey, Margaret. "Reflections on the sanctions decade and beyond." *International Journal* 64, no. 2 (2009): 539-549;

Dreher, Axel, Valentin Lang, B. Peter Rosendorff, and James Raymond Vreeland. "Buying votes and international organizations: The dirty work-hypothesis." *CEPR Discussion Paper No*. DP13290, 2018

Du Rocher, Sophie Boisseau. "The European Union, Burma/Myanmar and ASEAN: A challenge to European norms and values or a new opportunity." *Asia Europe Journal* 10, no. 2-3 (2012): 165-180.

Ellis, Desmond P. "The Hobbesian problem of order: A critical appraisal of the normative solution." *American Sociological Review* (1971): 692-703.

Franck, Thomas M., and Thomas M. Franck. *Fairness in international law and institutions*. Vol. 51. Oxford: Clarendon Press, 1995.

Franck, Thomas M., and Thomas M. Franck. *The power of legitimacy among nations.* Oxford University Press on Demand, 1990.

Galtung, Johan. "On the effects of international economic sanctions: With examples from the case of Rhodesia." *World Politics: A Quarterly Journal of International Relations* (1967): 378-416.

Government of the United Kingdom. E3 Foreign Ministers' Statement on the JCPOA: Statement by the United Kingdom, France and Germany on the JCPOA. 20 August 2020. Available on: https://www.gov.uk/government/speeches/e3-foreign-ministers-statement-on-the-jcpoa (last visit 21/08/2020)

Guzman, Andrew T. "Rethinking International Law as Law." *Proceedings of the Annual Meeting* (American Society of International Law) 103 (2009): 155-57.

Guzman, Andrew T. *How international law works: a rational choice theory*. Oxford University Press, (2008) 75–76.

Habermas, Jürgen. *Communication and the Evolution of Society, trans.* Thomas McCarthy. Boston: Beacon (1979).

Helms, Jesse. "What sanctions epidemic? US business' curious crusade." Foreign Affairs (1999): 2-8.

Henkin, Louis. *How nations behave: law and foreign policy*. Columbia University Press, 1979.

Hufbauer, Gary Clyde, Jeffrey J. Schott, Kimberly Ann Elliott, and Barbara Oegg. *Economic sanctions reconsidered, 3rd*. Institute for International Economics, Washington DC (2007).

Hufbauer, Gary Clyde, and Barbara Oegg. "The Impact of Economic Sanctions on US Trade: Andrew Rose's Gravity Model," *Policy Briefs PB03-04,* Peterson Institute for International Economics 2003.

Hurd, Ian. "The strategic use of liberal internationalism: Libya and the UN sanctions, 1992-2003." *International Organization* (2005): 495-526.

Hurd, Ian. *After anarchy: legitimacy and power in the United Nations Security Council*. Princeton University Press, 2008.

Hurrell, Andrew. "Power, institutions, and the production of inequality." *Power in global governance* 56 (2005).

Jazairy, Idriss. "Unilateral Economic Sanctions, International Law, and Human Rights." *Ethics & International Affairs 33*, no. 3 (2019): 291-302.

Kentikelenis, Alexander, and Erik Voeten. ″Exit, voice, and loyalty towards liberal international institutions: Evidence from United Nations speeches 1970–2017." In *International Political Economy Society conference, Massachusetts Institute of Technology*, Cambridge, MA, vol. 2, no. 3. 2018.

Klabbers, Jan. "Kristina Daugirdas, Reputation and the Responsibility of International Organizations". *EJIL: Talk!*. March 25, 2015. Available on: https://www.ejiltalk.org/kristina-daugirdas-reputation-and-the-responsibility-of-international-organizations/ (Last visit 06/07/2020).

Koremenos, Barbara, Charles Lipson, and Duncan Snidal. "The rational design of international institutions." *International organization* 55, no. 4 (2001): 761-799.

Krisch, Nico. "More equal than the rest? Hierarchy, equality and US predominance in international law." (2003): 135-175.

Lopez, George A., and David Cortright. "Financial Sanctions: The Key to a 'Smart 'Sanctions Strategy." *Die Friedens-Warte* (1997): 327-336.

Manson, Katrina. "US appeals for European support to extend Iran arms embargo". *Financial Times*. Washington August 14, 2020. https://www.ft.com/content/b87fe52b-8e46-437b-a158-357ffa85b7a2 (last visit 20/08/2020).

Marchi-Uhel, Catherine. *Report of the Office of the Ombudsperson pursuant to Security Council resolution 2368 (2017)*. 2368. S/2017/685 (7 August 2017).

Marossi, Ali.Z. and Bassett, Marisa R. *Economic Sanctions under International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences*. TMC Asser Press, the Hague 2015.

McAdam, Doug, Sidney Tarrow, and Charles Tilly. *Dynamics of contention.* Cambridge University Press, 2001.

Merquior, José Guilherme. *Rousseau and Weber: Two studies in the theory of legitimacy.* Routledge, 1980.

Milner, Helen. "The assumption of anarchy in international relations theory: a critique." *Review of International Studies* 17, no. 1 (1991): 67-85.

Murphy, Sean D. "Assessing the legality of invading Iraq." *Geo. lJ* 92 (2003).

Nagel, Thomas. "The problem of global justice." *Philosophy & public affairs* 33, no. 2 (2005): 113-147.

Nasu, Hitoshi. "Who Guards the Guardian?: Towards Regulation of the UN Security Council's Chapter VII Powers Through Dialogue." (2009): 10-52.

O'Connell, Mary Ellen. "Debating the law of sanctions." *European Journal of International Law* 13, no. 1 (2002): 63-79.

Orakhelashvili, Alexander. "The impact of unilateral EU economic sanctions on the UN collective security framework: The cases of Iran and Syria." *In Economic sanctions under international Law*, pp. 3-21. TMC Asser Press, The Hague, 2015.

Parsons, Talcott. "Reply to Cohen, Hazelrigg and Pope." *American Sociological Review* 41, no. 2 (1976): 361-365.

Pellet, Alain, and Alina Miron. "Sanctions." In *Max Planck Encyclopedia of Public International Law*. Oxford University Press, 2012.

Pellet, Alain. "Unilateral Sanctions and International Law". *Yearbook of Institute of International Law* - Tallinn Session - Volume 76 éditions A.Pedone EAN 978-2-233-00805-3. (2015): 723-736.

Petersson, Magnus. "Myanmar in EU–ASEAN relations." *Asia Europe Journal* 4, no. 4 (2006): 563-581.

Poast, Paul. ChicagoIntroIR Threads. August 16, 2020 http://www.paulpoast.com/chicagointroir/4594675940 (last visit 20/08/2020).

Podliska, Bradley F. *Acting Alone: A Scientific Study of American Hegemony and Unilateral Use-of-Force Decision Making*. Lexington Books, 2010.

Portela, Clara. "Where and why does the EU impose sanctions?" *Politique Européenne* 3 (2005): 83-111.

Rhoda, Maya. "Here Are All the Times Donald Trump Bashed the United Nations Before Speaking There". *Time Magazine*. September 18, 2017. https://time.com/4946276/donald-trump-united-nations-general-assembly/ (last visit: 03/07/2020).

Ringmar, Erik. *Identity, interest and action: a cultural explanation of Sweden's intervention in the Thirty Years War*. Cambridge University Press, (2007).

Sadurska, Romana, and Christine M. Chinkin. "The collapse of the international Tin Council: a case of state responsibility." *Va. J. Int'l L.* 30 (1989): 845.

Scherz, Antoinette, and Alain Zysset. "The UN Security Council, normative legitimacy and the challenge of specificity." Critical *Review of International Social and Political Philosophy* (2019).

Schmidt, Vivien A. "Democracy and legitimacy in the European Union revisited: Input, output and 'throughput'." *Political Studies* 61, no. 1 (2013): 2-22.

Scott, Shirley V., and Olivia Ambler. "Does legality really matter? Accounting for the decline in US foreign policy legitimacy following the 2003 invasion of Iraq." *European Journal of International Relations* 13, no. 1 (2007): 67-87.

Suchman, Mark C. "Managing legitimacy: Strategic and institutional approaches." *Academy of management review* 20, no. 3 (1995): 571-610.

Thouvenin, Jean-Marc. "International Economic Sanctions and Fundamental Rights: Friend or Foe?" In *the Influence of Human Rights on International Law*, pp. 113-129. Springer, Cham, 2015.

Thouvenin, Jean-Marc. "Le jour le plus triste pour les Nations unies, les frappes anglo-américaines de décembre sur l'Iraq." *Annuaire francais de droit international* 44, no. 1 (1998): 209-231.

Tilly, Charles. *Coercion, Capital, and European States*. AD 990-1992. Oxford: Blackwell, 1992.

CNN Politics. "Transcript: Nikki Haley's RNC Speech". August 25, 2020." Available on: https://edition.cnn.com/2020/08/24/politics/nikki-haley-speech-transcript/index.html (last visit 26/08/2020).

Tzanakopoulos, Antonios. "Domestic Courts in International Law: the international judicial function of national courts." Loy. LA *Int'l & Comp. L. Rev* 34 (2011): 133.

Tzanakopoulos, Antonios. Introduction to the Paperback Edition of Disobeying the Security Council. *Disobeying the Security Council: countermeasures against wrongful sanctions*. OUP Oxford, 2013.

Tzanakopoulos, Antonios. "L'Invocation de la Theorie des Contre-Mesures en Tant Que Justification de la Desobeissance au Conseil de Securite." *Rev. BDI* 46 (2013): 78.

Tzanakopoulos, Antonios. "Sanctions Imposed Unilaterally by the European Union: Implications for the European Union's International Responsibility." In *Economic sanctions under international law*, pp. 145-161. TMC Asser Press, The Hague, 2015.

Tzanakopoulos, Antonios. "Sharing responsibility for UN targeted sanctions." In I*nternational Organizations and Member State Responsibility*, pp. 139-158. Brill Nijhoff, (2017): 139-140.

Tzanakopoulos, Antonios. "The Solange Argument as a Justification for Disobeying the Security Council in the Kadi Judgments (November 7, 2013). KADI ON TRIAL: A MULTIFACETED ANALYSIS OF THE KADI JUDGMENT". pp. 121-134, Matej Avbelj, Filippo Fontanelli and Giuseppe Martinico, eds, Routledge, 2014, Oxford Legal Studies Research Paper No. 6/2014, Available at SSRN: https://ssrn.com/abstract=2364764

Tzanakopoulos, Antonios. *The United Nations Security Council Sanctions*. Faculty of Law, University of Oxford. Audiovisual Library of International Law (AVL) 30 Oct 2014.

Tzanakopoulos, Antonios. *Disobeying the Security Council: countermeasures against wrongful sanctions*. OUP Oxford, 2013.

United Nations. *United States of America: draft resolution [on the situation in the Gaza Strip]*. S/2018/520 (1 June 2018).

United States Mission to the United Nation. *U.S. Intervention on the Commemoration of the 75th Anniversary of the UN Charter*. New York June 26, 2020.

Vaïsse, Justin. *Barack Obama et sa Politique Etrangère* (2008-2012). Odile Jacob, 2012.

Voeten, Erik. "The political origins of the UN Security Council's ability to legitimize the use of force." *International Organization* 59, no. 3 (2005): 527-557.

Wendt, Alexander. *Social theory of international politics*. Vol. 67. Cambridge University Press, 1999.
Zelditch, Morris. "Theories of legitimacy." *The psychology of legitimacy: Emerging perspectives on ideology, justice, and intergroup relations* 33 (2001).